DOCKET

SUPREME COURT
OF THE UNITED STATES

No. 13-299
Title: Brandon C. Clark, et ux., Petitioners
v.
William J. Rameker, Trustee, et al.
Docketed: September 6, 2013
Linked with 13A147
Lower Ct: United States Court of Appeals for the Seventh Circuit
Case Nos.: (12-1241, 12-1255)
Decision Date: April 23, 2013
Rehearing Denied: May 21, 2013
Questions Presented

~~Date~~~	~~~~~~~Proceedings and Orders~~~~~~~~~~~~~~~~~~~~~
Aug 2 2013	Application (13A147) to extend the time to file a petition for a writ of certiorari from August 19, 2013 to September 18, 2013, submitted to Justice Kagan.
Aug 2 2013	Application (13A147) granted by Justice Kagan extending the time to file until September 18, 2013.
Sep 6 2013	Petition for a writ of certiorari filed. (Response due October 7, 2013)
Sep 30 2013	Order extending time to file response to petition to and including October 22, 2013, for all respondents.
Oct 22 2013	Brief of respondents William J. Rameker, Trustee, et al. in opposition filed.
Nov 12 2013	DISTRIBUTED for Conference of November 26, 2013.
Nov 12 2013	Reply of petitioners Brandon C. Clark and Heidi K. Hefferon-Clark filed. (Distributed)
Nov 26 2013	Petition GRANTED.
Dec 23 2013	Consent to the filing of amicus curiae briefs, in support of either party or of neither party, received from counsel for the petitioners.
Jan 8 2014	SET FOR ARGUMENT ON Monday, March 24, 2014
Jan 10 2014	Joint appendix filed. (Statement of costs filed.)
Jan 10 2014	Brief of petitioners Brandon C. Clark, and Heidi K. Heffron-Clark filed.
Jan 13 2014	Record received from U.S.C.A 7th Circuit. The record is electronic.
Jan 17 2014	Brief amicus curiae of G. Eric Brunstad, Jr. filed.
Jan 17 2014	Brief amici curiae of Tribune Company 401(K) Savings Plan, et al. filed.
Jan 17 2014	Brief amicus curiae of National Association of Consumer Bankruptcy Attorneys filed.
Feb 3 2014	CIRCULATED.

Feb 10 2014	Brief of respondents William J. Rameker, Trustee, et al. filed. (Distributed)
Feb 18 2014	Brief amicus curiae of Professor Seymour Goldberg filed. (Distributed)
Feb 18 2014	Brief amicus curiae of National Association of Bankruptcy Trustees filed. (Distributed)
Mar 7 2014	Reply of petitioners Brandon C. Clark, et ux. filed. (Distributed)
Mar 24 2014	Argued. For petitioners: Kannon K. Shanmugam, Washington, D. C. For respondents: Danielle Spinelli, Washington, D. C.

PETITION FOR WRIT OF CERTIORARI

RECORD
AND
BRIEFS

No. 13-299

SUPREME COURT, U.S.
FILED
SEP 4 2013
OFFICE OF THE CLERK

In the Supreme Court of the United States

BRANDON C. CLARK AND HEIDI K. HEFFRON-CLARK,
PETITIONERS

v.

WILLIAM J. RAMEKER, TRUSTEE, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether an individual retirement account that a debtor has inherited is exempt from the debtor's bankruptcy estate under Section 522 of the Bankruptcy Code, 11 U.S.C. 522, which exempts "retirement funds to the extent that those funds are in a fund or account that is exempt from taxation" under certain provisions of the Internal Revenue Code.

PARTIES TO THE PROCEEDING

Petitioners are Brandon C. Clark and Heidi K. Heffron-Clark. Respondents are William J. Rameker, Trustee, and Rusul Adili and Zinije Adili, d/b/a Kegonsa Plaza.

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In the Supreme Court of the United States

No.

BRANDON C. CLARK AND HEIDI K. HEFFRON-CLARK,
PETITIONERS

v.

WILLIAM J. RAMEKER, TRUSTEE, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

Brandon C. Clark and Heidi K. Heffron-Clark respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App., *infra*, 1a-7a) is reported at 714 F.3d 559. The opinion of the district court (App., *infra*, 9a-21a) is reported at 466 B.R. 135. The opinion of the bankruptcy court (App., *infra*, 22a-35a) is reported at 450 B.R. 858.

JURISDICTION

The judgment of the court of appeals was entered on April 23, 2013. A petition for rehearing was denied on May 21, 2013 (App., *infra*, 8a). On August 2, 2013, Jus-

tice Kagan extended the time within which to file a petition for a writ of certiorari to and including September 18, 2013. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTORY PROVISION INVOLVED

Section 522(b)(3)(C) and (d)(12) of Title 11 of the United States Code provides that a debtor may exempt the following property from the bankruptcy estate:

> [R]etirement funds to the extent that those funds are in a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986.

STATEMENT

This case is a compelling candidate for the Court's review, presenting a clean question of statutory interpretation on which the courts of appeals are in conflict. In Section 522 of the Bankruptcy Code, Congress provided that a debtor may exempt from the bankruptcy estate "retirement funds to the extent that those funds are in a fund or account that is exempt from taxation" under certain provisions of the Internal Revenue Code. This case presents the question whether an individual retirement account (IRA) that the debtor has inherited qualifies for that exemption.

In this case, petitioners, a husband and wife, declared bankruptcy under Chapter 7 of the Bankruptcy Code. In the bankruptcy proceedings, they claimed an exemption from the bankruptcy estate for an IRA that had passed to the wife when her mother died. Respondents, the bankruptcy trustee and unsecured creditors, objected to the claimed exemption. The bankruptcy court sustained respondents' objection, App., *infra*, 22a-35a, but the district court reversed, *id.* at 9a-21a.

The court of appeals then reversed the district court and rejected the claimed exemption. App., *infra*, 1a-7a. In an opinion written by Judge Easterbrook, the court of appeals held that an individual retirement account that the debtor has inherited does not qualify for the "retirement funds" exemption in Section 522. In so doing, the court expressly recognized that it was creating a circuit conflict on the interpretation of the "retirement funds" exemption. Because this case presents an ideal vehicle for resolving that conflict on an important and recurring question of bankruptcy law, the petition for certiorari should be granted.

1. Approximately 1.5 million American families and individuals file for bankruptcy every year. See 1 Henry J. Sommer, *Consumer Bankruptcy Law and Practice* § 1.1.1, at 1 (9th ed. 2009). When a debtor files for bankruptcy, the debtor's property becomes part of the bankruptcy estate. See 11 U.S.C. 541(a). Congress has created various exceptions and exemptions from the bankruptcy estate, which reflect policy judgments about certain types of property that debtors should be permitted to retain.

Of note here, Section 522 of the Bankruptcy Code establishes the regime by which a debtor may claim exemptions from the bankruptcy estate. A debtor may elect either to claim exemptions from a lengthy list of federal exemptions pursuant to Section 522(b)(2), or to claim exemptions under state law (as supplemented by a shorter list of federal exemptions) pursuant to Section 522(b)(3). See 11 U.S.C. 522(b)(1).

This case involves the exemption in Section 522 for "retirement funds." Congress added that exemption in the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 23 (BAPCPA). Before the enactment of BAPCPA, this

Court had held that various types of retirement funds, including individual retirement accounts, were exempt or excluded from the bankruptcy estate under other provisions of the Bankruptcy Code. See *Rousey* v. *Jacoway*, 544 U.S. 320, 334-335 (2005); *Patterson* v. *Shumate*, 504 U.S. 753, 765-766 (1992).

In enacting the "retirement funds" exemption, Congress sought to "expand the protection for tax-favored retirement plans or arrangements that may not be already protected under * * * state or Federal law." H.R. Rep. No. 31, 109th Cong., 1st Sess., Pt. I, at 63-64 (2005). In order to ensure that the exemption would be available "regardless of the State policy on exemptions," *id.* at 43, Congress enacted identically worded provisions for debtors who elect to pursue the state and federal exemption schemes, respectively. See 11 U.S.C. 522(b)(3)(C) (state exemption scheme); 11 U.S.C. 522(d)(12) (federal exemption scheme). The same "retirement funds" exemption is therefore available to all debtors as a matter of federal law.

The "retirement funds" exemption provides that a debtor may exempt from the property of the bankruptcy estate "retirement funds to the extent that those funds are in a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986." 11 U.S.C. 522(b)(3)(C) and (d)(12). While it may not be obvious from the enumerated list of Internal Revenue Code provisions, the exemption covers all of the most familiar types of retirement accounts, including qualified pension, profit-sharing, and stock-bonus plans, see 26 U.S.C. 401; employee annuity plans, see 26 U.S.C. 403; IRAs, see 26 U.S.C. 408; Roth IRAs, see 26 U.S.C. 408A; certain defined-benefit retirement plans, see 26 U.S.C. 414; deferred-compensation plans of state and local govern-

ments and tax-exempt organizations, see 26 U.S.C. 457; and retirement plans for certain tax-exempt entities, see 26 U.S.C. 501(a).

This case presents the question whether an "inherited" IRA—that is, an IRA that a non-spouse beneficiary has acquired "by reason of the death of another individual," 26 U.S.C. 408(d)(3)(C)(ii)(I)—qualifies for the "retirement funds" exemption. An inherited IRA retains its tax-exempt status, with funds being taxed, if at all, only upon distribution. See 26 U.S.C. 408(e)(1); 26 U.S.C. 408A(a). The beneficiary of an inherited IRA, however, may not contribute to the IRA or roll it over into another retirement account. See 26 U.S.C. 408(d)(3)(C); IRS, Publication 590: Individual Retirement Arrangements (IRAs) 17 (2013) (IRS Publication 590).[1] In addition, the beneficiary may withdraw funds from the account and is required to withdraw a specified minimum amount annually. See IRS Publication 590, at 33-35.

2. Petitioners Brandon Clark and Heidi Heffron-Clark are a husband and wife who live in Stoughton, Wisconsin, with their six-year-old son. In 2000, Mrs. Heffron-Clark's mother, Ruth Heffron, established an IRA. In 2001, Mrs. Heffron died, and the IRA passed to Mrs. Heffron-Clark, who had been named as the primary beneficiary. After she assumed the IRA, Mrs. Heffron-Clark began taking the required minimum distributions in accordance with the rules governing inherited IRAs; under those rules, she is entitled to continue doing so for the remainder of her lifetime. C.A. App. 30-31.

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[1] When the beneficiary is a spouse of the decedent, the spouse may elect to step into the decedent's shoes and become the IRA's owner. A spouse who does so possesses the right to contribute to the IRA or roll it over. See IRS Publication 590, at 16-17.

After their business failed during the recent recession, petitioners could no longer satisfy their debts and the living expenses of their family. Accordingly, on October 29, 2010, they filed a Chapter 7 petition for bankruptcy in the United States Bankruptcy Court for the Western District of Wisconsin.

In the bankruptcy proceedings, petitioners claimed that the IRA that Mrs. Heffron-Clark had inherited from her mother qualified for the "retirement funds" exemption in 11 U.S.C. 522(b)(3)(C).[2] At the time of the bankruptcy, the IRA was valued at nearly $300,000 and was by far petitioners' most valuable asset aside from their home (which was exempt under state law). See C.A. App. 37-41 (listing personal property, including the IRA, totaling some $378,000 in value). Respondents, the bankruptcy trustee and unsecured creditors, objected to the exemption, contending that an inherited IRA does not qualify for the "retirement funds" exemption in Section 522.

The bankruptcy court sustained respondents' objection. App., *infra*, 22a-35a. As is relevant here, the court reasoned that the funds in the inherited IRA did not constitute "retirement funds" because they were "not segregated to meet the needs of, nor distributed on the occasion of, any person's retirement." *Id.* at 30a.[3]

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[2] Petitioners also claimed that the IRA qualified for an exemption under Wisconsin law. The bankruptcy court rejected that claim, see App., *infra*, 33a-35a, and petitioners did not appeal from that ruling.

[3] The bankruptcy court stayed its order sustaining the objection pending the completion of all appeals. See Order 1, Bankr. Ct. Dkt. 66 (June 13, 2011). Currently, the trustee retains possession of the IRA, and the required minimum distributions from the IRA to Mrs. Heffron-Clark are being deposited in a trust account maintained by the trustee. See *id.* at 2.

3. The district court reversed. App., *infra*, 9a-21a. The court reasoned that funds set aside in an IRA do not "lose their character" as "retirement funds" when they pass to a beneficiary after the account holder's death. *Id.* at 18a-21a. Rejecting the bankruptcy court's analysis, the district court concluded that the "retirement funds" exemption in Section 522 "do[es] not distinguish between an account built up by a decedent and inherited by the debtor and an account made up of contributions by the debtor herself." *Id.* at 20a. The court added that an inherited IRA expressly remains exempt from taxation under 26 U.S.C. 408(e)(1), one of the enumerated Internal Revenue Code provisions in the "retirement funds" exemption. *Ibid.*

In ruling in favor of petitioners, the district court observed that its decision was consistent with the decisions of every other court to have considered "this precise issue" on facts "indistinguishable from those in this case" (with the exception of a bankruptcy court that had subsequently been reversed). App., *infra*, 16a. After analyzing those decisions, the court concluded that "[the majority's] construction of the applicable statutes is more persuasive" and that "the majority has reached the right result." *Id.* at 21a.

4. The court of appeals reversed, holding that an inherited IRA does not qualify for the "retirement funds" exemption in Section 522. App., *infra*, 1a-7a.

As an initial matter, the court of appeals acknowledged that the Fifth Circuit had held that an inherited IRA does qualify for the "retirement funds" exemption in Section 522. App., *infra*, 3a (citing *In re Chilton*, 674 F.3d 486 (5th Cir. 2012)). The court of appeals nevertheless concluded that funds constitute "retirement funds" under Section 522 only if they are "savings reserved for use after their owners stop working." *Id.* at 7a. The

court reasoned that, when Mrs. Heffron-Clark's mother died, the funds in the inherited IRA "became no one's retirement funds," even though they continued to be held in a retirement account and the account "remain[ed] a tax-deferral vehicle." *Id.* at 4a. The court likened the contents of an inherited IRA to funds withdrawn from the IRA by the original owner and given to the beneficiary as a cash gift. *Ibid.* Because the beneficiary may withdraw funds from the IRA (and must take minimum distributions), the court concluded that the entire IRA is "a pot of money that can be freely used for current consumption" and so should not be "shelter[ed] from creditors." *Ibid.*

The court of appeals proceeded to reject the reasoning of the Fifth Circuit and other courts that had concluded that that an inherited IRA qualifies for the "retirement funds" exemption. App., *infra*, 4a-5a. Specifically, the court of appeals rejected the significance of the fact that an inherited IRA remains an "individual retirement account," contending that "the 'IRA' part of 'inherited IRA' * * * designates the funds' *source*, not the assets' current status." *Ibid.* In the court's view, "an inherited IRA does not have the economic attributes of a retirement vehicle," because of the requirement that the beneficiary take minimum distributions. *Id.* at 5a. The court of appeals was similarly unmoved by the fact that, unlike the other exemptions in Section 522, the "retirement funds" exemption does not refer to "the debtor's" retirement funds or "the debtor's interest" in the exempted property. *Id.* at 5a-6a. Even in the absence of such language, the court asserted, Mrs. Heffron-Clark's ability to invoke the exemption "depend[s] on how [she] use[s] the property, not how her mother used it." *Id.* at 6a.

Notwithstanding the wealth of contrary authority, the court of appeals "d[id] not think the question close," reiterating that "inherited IRAs represent an opportunity for current consumption, not a fund of retirement savings." App., *infra*, 7a. The court thus refused to apply any canon of construction favoring debtors in a dispute regarding the scope of a bankruptcy exemption. *Ibid.*

In holding that an inherited IRA does not qualify for the "retirement funds" exemption, the court of appeals "disagree[d] with the fifth circuit's decision in *Chilton*" and expressly acknowledged that its "conclusion creates a conflict among the circuits" on the interpretation of the exemption. App., *infra*, 7a. Because its decision created a circuit conflict, the panel circulated its opinion to the full court before issuance. *Ibid.*

5. The court of appeals subsequently denied rehearing. App., *infra*, 8a.

REASONS FOR GRANTING THE PETITION

This case presents a straightforward conflict in the courts of appeals on an important and recurring question of statutory interpretation. In the decision below, the Seventh Circuit expressly recognized that it was creating a conflict with the Fifth Circuit on the correct interpretation of the Bankruptcy Code's "retirement funds" exemption. In fact, the Seventh Circuit's decision also conflicts with all of the other valid lower-court decisions to have considered the issue, including the decisions of two bankruptcy appellate panels.

The question presented, moreover, is one of substantial and growing importance. The conflict on that question contravenes the need for uniformity in the interpretation and application of the bankruptcy laws—a need that Congress specifically recognized when it enacted the exemption at issue. And this is an ideal case in which

to consider and resolve that question, which, although frequently litigated, rarely reaches the court of appeals level. Because this case comfortably satisfies the criteria for further review, the petition for certiorari should be granted.

A. The Decision Below Creates A Circuit Conflict

As the Seventh Circuit expressly recognized, see App., *infra*, 7a, the decision below creates a conflict in the courts of appeals concerning whether an inherited IRA qualifies for the "retirement funds" exemption in Section 522 of the Bankruptcy Code. That conflict plainly warrants this Court's review.

1. As the Seventh Circuit noted, see App., *infra*, 3a, the Fifth Circuit has squarely held that inherited IRAs such as petitioners' are covered by the "retirement funds" exemption. See *In re Chilton*, 674 F.3d 486 (5th Cir. 2012). In *Chilton*, as here, one of the debtors was the beneficiary of an IRA that passed to her upon the death of her mother, the account owner. See *id.* at 487. The debtors invoked the "retirement funds" exemption in Section 522(d)(12). See *id.* at 488.[4]

As is relevant here, the Fifth Circuit reasoned that "[t]he plain meaning of the statutory language refers to money that was 'set apart' for retirement." *Chilton*, 674 F.3d at 489. "Here," the court continued, "there is no question that the funds contained in the debtors' inherited IRA were 'set apart' for retirement at the time [the original owner] deposited them into an IRA." *Ibid.*

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[4] As noted above, see p. 4, the "retirement funds" exemption is stated twice in Section 522, in subsections (b)(3)(C) and (d)(12); it is identically worded in each instance.

Notably, the Fifth Circuit rejected the argument that the funds in an inherited IRA do not constitute "retirement funds" because a beneficiary who inherits the account may withdraw those funds before reaching retirement age. *Chilton*, 674 F.3d at 489. The court reasoned that "the defining characteristic of 'retirement funds' is the purpose they are 'set apart' for, not what happens after they are 'set apart.'" *Ibid.* Like other courts, the Fifth Circuit found support for its analysis in 11 U.S.C. 522(b)(4)(C), which provides that the direct transfer of retirement funds—such as from the owner's account to an account for the benefit of the beneficiary upon the owner's death—does not cause those funds to "cease to qualify for exemption under [paragraph (3)(C) or] subsection (d)(12)." *Ibid.* (quoting 11 U.S.C. 522(b)(4)(C)). Stating that it "s[aw] no reason to interpret the statutory language differently from its plain meaning," the court concluded that an inherited IRA qualifies for the "retirement funds" exemption in Section 522. *Ibid.*

In so concluding, the Fifth Circuit noted that an inherited IRA remains exempt from taxation under 26 U.S.C. 408(e)(1). *Chilton*, 674 F.3d at 490. The court explained that, "[w]hile inherited IRAs operate differently from [non-inherited] IRAs" in some respects, they "are subject to the same provision as all other IRAs—that is, section 408—for the purpose of determining whether they are exempt from taxation." *Ibid.*

2. Remarkably, the Seventh Circuit's decision conflicts not only with the Fifth Circuit's decision in *Chilton*, but with every other valid lower-court decision to have considered the issue.[5] The courts to have adopted peti-

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[5] The only other courts to have reached the same result as the Seventh Circuit in written opinions were the bankruptcy courts in

tioners' interpretation include two bankruptcy appellate panels, see *In re Hamlin*, 465 B.R. 863, 871-873 (B.A.P. 9th Cir. 2012); *In re Nessa*, 426 B.R. 312, 314-315 (B.A.P. 8th Cir. 2010), and district or bankruptcy courts from almost every other circuit in the country, see *In re Trawick*, No. 12-2039, ___ B.R. ___, 2013 WL 4574533, at *12-*15 (Bankr. C.D. Cal. Aug. 29, 2013); *In re Bauer*, No. 13-1562, 2013 WL 2661835, at *1-*2 (Bankr. D.S.C. June 12, 2013); *In re Seeling*, 471 B.R. 320, 322-323 (Bankr. D. Mass. 2012); *In re Stephenson*, No. 11-10848, 2011 WL 6152960, at *2-*4 (E.D. Mich. Dec. 12, 2011); *In re Kalso*, No. 10-72587, 2011 WL 3678326, at *2 (Bankr. E.D. Mich. Aug. 19, 2011); *In re Cutignola*, 450 B.R. 445, 450-452 (Bankr. S.D.N.Y. 2011); *In re Johnson*, 452 B.R. 804, 807-808 (Bankr. W.D. Wash. 2011); *In re Mathusa*, 446 B.R. 601, 603-604 (Bankr. M.D. Fla. 2011); *In re Thiem*, 443 B.R. 832, 843-844 (Bankr. D. Ariz. 2011); *In re Tabor*, No. 10-1580, 2010 WL 8914472, at *1-*2 (M.D. Pa. Dec. 2, 2010); *In re Weilhammer*, No. 09-15148, 2010 WL 3431465, at *4-*6 (Bankr. S.D. Cal. Aug. 30, 2010); *In re Kuchta*, 434 B.R. 837, 843-844 (Bankr. N.D. Ohio 2010). Notably, that list includes two bankruptcy courts that have already considered the issue since the Seventh Circuit's decision in this case and have specifically rejected the Seventh Circuit's reasoning. See, *e.g.*, *Trawick*, 2013 WL 4574533, at *13 (criticizing the Seventh Circuit on the ground that its interpretation "is not based on the plain language of the statute, but appears to be based on the court's own policy considerations").

Chilton and in this case, both of which were reversed on appeal. See *In re Chilton*, 426 B.R. 612, 616 (Bankr. E.D. Tex. 2010), rev'd, 444 B.R. 548, 552 (E.D. Tex. 2011); App., *infra*, 22a-35a, rev'd, *id.* at 9a-21a.

In the face of that abundance of authority, there appears to be little prospect that the Seventh Circuit will back down and eliminate the conflict that it created in the decision below. To the contrary, in his opinion for the Seventh Circuit, Judge Easterbrook gave that authority the back of his hand. See App., *infra*, 7a (stating that "[w]e do not think the question close"). Pursuant to circuit policy, moreover, the panel circulated its opinion to the full court before issuance, and the court subsequently denied rehearing en banc. See *id.* at 7a-8a. The resulting conflict therefore requires this Court's intervention.

B. The Question Presented Is An Important And Recurring One That Warrants Review In This Case

The question presented—whether inherited IRAs are exempt from bankruptcy estates—is a question of obvious importance that is frequently litigated in the bankruptcy courts. At the same time, however, that question rarely reaches the courts of appeals. The Court should therefore take this opportunity to resolve the circuit conflict and grant the petition for certiorari.

1. To begin with, the question presented is of exceptional practical and legal importance, as demonstrated by the number of Americans likely to be affected by its resolution and the sheer amount of money potentially implicated. Some 40% of American households—almost 50 million in all—own IRAs. See Sarah Holden & Daniel Schrass, *The Role of IRAs in U.S. Households' Saving for Retirement, 2012*, 18 ICI Research Perspective No. 8, at 1, 3 (Dec. 2012) <tinyurl.com/roleofiras> (*Role of IRAs*). As of June 2012, approximately $5.1 trillion was held in IRAs, representing more than 25% of all retirement assets in the United States. *Id.* at 2. In fact, IRAs make up 10% of all household *financial* assets—up from

just 5% only twenty years ago. *Ibid.* Not surprisingly, as this case vividly illustrates, an IRA will often be the largest personal-property asset in a debtor's bankruptcy estate. See p. 6, *supra*.

As IRAs have become more common, so too has the passing of IRAs to beneficiaries upon the owner's death. IRA ownership is concentrated in older segments of the population, with the aging "baby boom generation" having the highest percentage of ownership. See *Role of IRAs* 4; Sarah Holden & Daniel Schrass, *Appendix: Additional Data on IRA Ownership in 2012*, 18 ICI Research Perspective No. 8A, at 4-5 (Dec. 2012) <tinyurl.com/iraappendix>. And IRA owners who have reached retirement age are overwhelmingly likely to base withdrawals on their required minimum distributions, thus raising the likelihood that there will be funds left over in their IRAs at the time of death. See *Role of IRAs* 22-23.

Given the swelling amount of assets held in IRAs and the likelihood that a substantial percentage of those assets will be inherited, the question whether inherited IRAs are exempt from bankruptcy estates has taken on heightened importance. As commentators have noted with specific reference to the question presented here, "[t]his issue is significant not only because more families in the United States are facing creditor problems, but also due to the fact that many American families are largely placing the bulk of their wealth into retirement accounts." James L. Boring et al., *Protection of Inherited IRAs*, 36 ACTEC L.J. 577, 579 (2010).

2. In addition, the conflict in the lower courts on this important question contravenes the necessary uniformity in the interpretation and application of the bankruptcy laws. By virtue of the conflict, debtors and creditors face divergent rules on the exemption of inherited IRAs from bankruptcy estates depending on where debtors file for

bankruptcy relief. See, *e.g.*, *Bauer*, 2013 WL 2661835, at *1 n.3 (noting that the debtor, who had filed for bankruptcy in South Carolina, had previously lived in Indiana, and that, "[h]ad [the debtor] filed his bankruptcy case there * * *, he would have no exemption" for his inherited IRA as a result of the Seventh Circuit's decision). For debtors such as petitioners, those divergent rules can lead to dramatic differences in the lives they lead after emerging from bankruptcy.

As a preliminary matter, uniform interpretation is fundamental to the proper administration of the Bankruptcy Code. The Constitution itself acknowledges the importance of uniformity in bankruptcy law, granting Congress the power "[t]o establish * * * uniform Laws on the subject of Bankruptcies throughout the United States." U.S. Const. Art. I, § 8, cl. 4; see *Railway Labor Executives' Association* v. *Gibbons*, 455 U.S. 457, 471-472 (1982). The power to create a uniform system was considered necessary, *inter alia*, to "secur[e] equality of rights and remedies among the citizens of all the states." 3 Joseph Story, *Commentaries on the Constitution of the United States* § 1102, at 6 (1833). Accordingly, this Court routinely grants certiorari to resolve disagreement among courts of appeals concerning the correct interpretation or application of provisions of the Bankruptcy Code. See, *e.g.*, *Bullock* v. *BankChampaign, N.A.*, 133 S. Ct. 1754, 1758 (2013); *Hall* v. *United States*, 132 S. Ct. 1882, 1886 & n.1 (2012); *Ransom* v. *FIA Card Services, N.A.*, 131 S. Ct. 716, 723 & n.4 (2011).

In this case, the interest in uniform interpretation of the bankruptcy laws is all the more acute because, "[a]lthough Congress has generally given latitude to the states regarding exemptions, it enacted a uniform exemption for tax-favored retirement funds that applies even if a debtor selects non-bankruptcy law or lives in a

state that has opted out of federal exemptions." App., *infra*, 11a; see H.R. Rep. No. 31, *supra*, Pt. I, at 43. As the National Association of Consumer Bankruptcy Attorneys explained in an amicus brief below, "Congress's enactment of BAPCPA was intended to make the availability of exemptions for inherited IRAs uniform, replacing the patchwork of conflicting state law exemptions that had previously governed that inquiry." NACBA C.A. Br. 12. The current conflict in the circuits frustrates Congress's intent to establish a uniform exemption for "retirement funds" that is available to all debtors regardless of where they are located across the Nation.

3. The Court should take this opportunity to resolve the circuit conflict because, although the question presented arises often in bankruptcy cases, see pp. 11-12, *supra* (citing cases), it rarely percolates up to the courts of appeals. That is unsurprising, because the parties in bankruptcy cases often lack the financial resources to pursue protracted litigation. As one commentator has explained, "[t]he nature of bankruptcy cases tends to discourage further appellate review in the Article III courts because of the twin concerns of delay and cost associated with prolonged litigation." Troy A. McKenzie, *Judicial Independence, Autonomy, and the Bankruptcy Courts*, 62 Stan. L. Rev. 747, 782 (2010). For example, only one out of every 1,580 bankruptcy cases reaches the courts of appeals level, compared to one in every twelve non-prisoner civil suits. *Id.* at 783. Despite the massive number of bankruptcies in the United States, moreover, bankruptcy appeals represent only 1.2% of all appeals filed in the regional circuits; including business bankruptcies, there are now fewer than 700 bankruptcy appeals per year, on any issue, in the whole country. See United States Courts, *Judicial Facts and Figures 2011*, tbl. 2.3 <tinyurl.com/appealsfiledtable>.

There is therefore considerable uncertainty about when, if ever, the Court would have another opportunity to resolve the question presented if it were to deny review in this case. It cannot be disputed that the question is a recurring one of great importance to litigants and the administration of the Bankruptcy Code. See National Association of Bankruptcy Trustees C.A. Br. 2 (noting that this case "raises a significant issue of national importance to trustees"). Nor can it be disputed that there is a clear circuit conflict on the question in the wake of the Seventh Circuit's decision. Because this case is an ideal vehicle in which to consider that question, the Court should grant review and resolve the conflict on the proper interpretation of the "retirement funds" exemption.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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APPENDIX

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APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Nos. 12-1241 & 12-1255

In the Matter of: BRANDON C. CLARK and HEIDI HEFFRON-CLARK, Debtors-Appellees.

Appeal of: WILLIAM J. RAMEKER, Trustee.

Argued: September 6, 2012
Decided: April 23, 2013

Before EASTERBROOK, Chief Judge, and FLAUM and WILLIAMS, Circuit Judges.

EASTERBROOK, Chief Judge.

Congress has decided that funds set aside for retirement need not be used to pay pre-retirement debts. This policy is implemented through 11 U.S.C. § 522(b)(3)(C) and (d)(12), which exempt retirement funds from creditors' claims in bankruptcy. This appeal presents the question whether a non-spousal inherited individual retirement account ("inherited IRA" for short) is exempt.

Section 522(b)(3)(C) and (d)(12) are identical. Each exempts from creditors' claims any "retirement funds to the extent that those funds are in a fund or account that is exempt from taxation under sections 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986." An individual retirement account by which a person provides for his or her own retirement meets this

requirement. If a married holder of an IRA dies, the decedent's spouse inherits the account and can keep it separate or roll it over into his or her own IRA. Either way, the money remains "retirement funds" in the same sense as before the original owner's death: the surviving spouse cannot withdraw any of the money before age 59½ without paying a penalty tax and must start withdrawals no later than the year in which the survivor reaches 70½. Because the money entered the IRA without being subject to the income tax, all withdrawals are taxed at ordinary rates.

Different rules govern inherited IRAs. We illustrate using the facts of this case. At her death, Ruth Heffron owned an IRA worth approximately $300,000. Ruth's daughter Heidi Heffron–Clark was the designated beneficiary. Ruth's account passed to Heidi. It remains sheltered from taxation until the money is withdrawn, but many of the account's other attributes changed. For example, no new contributions can be made, and the balance cannot be rolled over or merged with any other account. 26 U.S.C. § 408(d)(3)(C). And instead of being dedicated to Heidi's retirement years, the inherited IRA must begin distributing its assets within a year of the original owner's death. 26 U.S.C. § 402(c)(11)(A), incorporating 26 U.S.C. § 401(a)(9)(B). Payout must be completed in as little as five years (though the time can be longer for some accounts). In other words, an inherited IRA is a time-limited tax-deferral vehicle, but not a place to hold wealth for use after the new owner's retirement. This statutory treatment allows the beneficiary to avoid paying income tax immediately after the original owner's death (recall that money in a normal IRA is pre-tax dollars; unlike assets that pass with a decedent's estate, the contents of an inherited IRA are taxable) while limiting the duration of tax deferral. If recipients of inherited

IRAs could hold the wealth until their own retirement, tax deferral might become tax exemption, as capital held in IRAs could pass down through the generations without ever being subject to income tax.

In the bankruptcy proceeding initiated by Heidi Heffron–Clark and her husband Brandon Clark ("the Clarks"), Bankruptcy Judge Martin held that an inherited IRA does not represent "retirement funds" in the hands of the current owner and so is not exempt under § 522(b)(3)(C) and (d)(12). 450 B.R. 858 (Bankr. W.D. Wis. 2011). The bankruptcy judge concluded that money counts as "retirement funds" (a term that the Bankruptcy Code does not define) only when held for the owner's retirement, while an inherited IRA must be distributed earlier. A district judge reversed, 466 B.R. 135 (W.D. Wis. 2012), adopting the view, first articulated in *In re Nessa*, 426 B.R. 312 (BAP 8th Cir. 2010), that any money representing "retirement funds" in the decedent's hands must be treated the same way in successors' hands. The fifth circuit has since agreed with that approach, *In re Chilton*, 674 F.3d 486 (5th Cir. 2012), observing that § 522(b)(3)(C) and (d)(12) refer to "retirement funds" without providing that they must be the debtor's. It is enough, *Chilton* concludes, if they were ever anyone's retirement funds.

Sometimes assets are exempt in bankruptcy because of how they function in someone else's hands. Suppose Heidi Heffron–Clark were the trustee of a retirement account for the benefit of her sister. Trustees are legal owners of the assets they administer, but the Clarks' creditors could not reach retirement assets that Heidi was holding as trustee. So we follow *Chilton* in observing that exemptions in bankruptcy do not (necessarily) depend on whether an asset is a retirement fund (or an ag-

ricultural tool, or one of the other categories of exemption) as the debtor uses it. But by the time the Clarks filed for bankruptcy, the money in the inherited IRA did not represent *anyone's* retirement funds. They had been Ruth's, but when she died they became no one's retirement funds. The account remains a tax-deferral vehicle until the mandatory distribution is completed, but distribution precedes the owner's retirement. To treat this account as exempt under § 522(b)(3)(C) and (d)(12) would be to shelter from creditors a pot of money that can be freely used for current consumption.

To see this, suppose Ruth had withdrawn the entire $300,000 from her IRA, paying the penalty tax if necessary, waited a month, then given the money to Heidi. The money would have been "retirement funds" while in Ruth's IRA, but not thereafter; in Heidi's bank account the money would be no different from any other assets she could save or spend at will. And that would have been true during the month Ruth banked the funds before sending them to Heidi. Ruth's creditors could have reached the money, notwithstanding the fact that it formerly was part of her retirement account. Why should it make a difference whether the money passed to Heidi on Ruth's death or a little earlier? Either way, the money used to be "retirement funds" but isn't now. We doubt that *Chilton* would think that money expressly withdrawn from an IRA retains its character as "retirement funds." Section 522(b)(3)(C) and (d)(12) provides that the exemption depends on the *conjunction* of tax deferral and assets' status as "retirement funds"; that an inherited IRA provides tax benefits is not enough.

Chilton and *Nessa* give weight to the phrase "inherited individual retirement account." It includes the word "retirement," after all. True enough, but the "IRA" part

of "inherited IRA" (as the Internal Revenue Code uses the phrase) designates the funds' *source*, not the assets' current status. As we have observed, an inherited IRA does not have the economic attributes of a retirement vehicle, because the money cannot be held in the account until the current owner's retirement.

Chilton and *Nessa* also give weight to the fact that many of the other exemptions in § 522 refer to "the debtor's" interests, while § 522(b)(3)(C) and (d)(12) does not. For example, § 522(b)(3)(B) exempts "any interest in property in which the debtor had, immediately before the commencement of the case, an interest as a tenant by the entirety or joint tenant to the extent that such interest ... is exempt from process under applicable nonbankruptcy law". This sort of language has a temporal effect: what is exempt is the debtor's tenancy when the bankruptcy begins. A debtor who on the date of filing has $100,000 in cash and no real property cannot later invest the $100,000 in a joint tenancy and then claim the property as exempt. Similarly a farmer cannot buy new farm implements after filing for bankruptcy and claim the acquisition as exempt. Section 522(b)(3)(C) and (d)(12) gives debtors a break by omitting a temporal restriction: new value added to a retirement fund during bankruptcy (an employer may continue to make retirement contributions) is outside creditors' reach, even though new real property and new farm tools are not. But temporal differences in the way exemptions work does not suggest that a pot of assets that is not "retirement funds" *any time* during the bankruptcy is exempt just because the debtor's predecessor in interest had saved for retirement.

Consider a parallel situation. The Bankruptcy Code provides a homestead exemption (subject to caps under

state law). So if Ruth had been living at home and had filed for bankruptcy, some or all of the house's value would have been exempt from creditors' claims. Section 522(b)(3)(A) implements this by exempting a "domicile" in which the debtor lived for at least 730 days before filing for bankruptcy. Suppose Heidi had inherited her mother's house and rented it out. She could not claim the property as exempt just because it used to be her mother's home; it would be exempt only if it had been Heidi's home for the two years before the Clarks' filing. Exemption would depend on how Heidi used the property, not how her mother used it. Just so with retirement funds.

At oral argument, the Clarks' lawyer told us that reading the Bankruptcy Code to exempt assets that formerly were someone's retirement funds, but have never been the debtors' retirement funds, would encourage people to save in order to make larger bequests to their children. If parents know that anything in their IRAs could be passed to their relatives free of creditors' claims, they would save more and draw less from IRAs during retirement. That's true enough, but it does not imply an atemporal meaning of "retirement funds." One could equally say that it would promote savings to hold that *any* asset acquired from one's relatives by will, insurance, annuity, or survivorship designation is exempt from creditors' claims. That is not remotely what § 522 provides, however. It is always possible to get more of whatever objective may have prompted a given clause, but "no legislation pursues its purposes at all costs. Deciding what competing values will or will not be sacrificed to the achievement of a particular objective is the very essence of legislative choice—and it frustrates rather than effectuates legislative intent simplistically to assume that *whatever* furthers the statute's primary objective must be the law." *Rodriguez v. United States*, 480

U.S. 522, 525–26 (1987) (emphasis in original). Section 522(b)(3)(C) and (d)(12) does not throw creditors' claims to the wolves in order to enhance the savings and bequest motives. It provides a specific exemption for retirement funds—and inherited IRAs do not qualify, because they are not savings reserved for use after their owners stop working.

The district judge thought the question close and believed that close questions should be decided in debtors' favor. We do not think the question close; inherited IRAs represent an opportunity for current consumption, not a fund of retirement savings. It is therefore unnecessary to decide whether there is or should be an interpretive principle favoring either side in a dispute about the scope of an exemption, or whether any such principle would depend on a combination of federal law (for federal exemptions) plus state law (for state exemptions), as in *In re Barker*, 768 F.2d 191, 196 (7th Cir. 1985).

The bankruptcy judge got this right. We disagree with the fifth circuit's decision in *Chilton*. Because our conclusion creates a conflict among the circuits, we circulated the opinion before release to all judges in active service. None of the judges requested a hearing *en banc*.

REVERSED.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Nos. 12-1241 & 12-1255

In the Matter of: BRANDON C. CLARK and HEIDI HEFFRON-CLARK, Debtors-Appellees.

Appeal of: WILLIAM J. RAMEKER, Trustee.

May 21, 2013

Before EASTERBROOK, Chief Judge, and FLAUM and WILLIAMS, Circuit Judges.

ORDER

Debtors-appellees filed a petition for rehearing and rehearing en banc on May 6, 2013. No judge in regular active service has requested a vote on the petition for rehearing en banc, and all of the judges on the panel have voted to deny rehearing. The petition for rehearing is therefore DENIED.

APPENDIX C

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

No. 11-CV-482

In re BRANDON C. CLARK and HEIDI K. HEFFRON-CLARK, Debtors.

BRANDON C. CLARK and HEIDI K. HEFFRON-CLARK, Appellants,

v.

WILLIAM J. RAMEKER, Trustee, and RESUL and ZINIJE ADILI, d/b/a KEGONSA PLAZA, Appellees.

January 5, 2012

OPINION AND ORDER

BARBARA B. CRABB, District Judge.

This appeal from a final decision of the bankruptcy court raises the question whether Inherited Individual Retirement Accounts qualify for exemption from a bankruptcy estate under the Bankruptcy Code. (Inherited IRAs hold funds inherited from persons who established Individual Retirement Accounts for their own use and died before depleting the funds in those accounts.) Bankruptcy Judge Robert Martin concluded in this case that these accounts do not qualify for exemption. With one

exception, every other court to consider the question under federal law has reached the contrary conclusion. The question is an open one in this circuit.

Although Judge Martin analyzed the case in his usual thoughtful manner, I am not persuaded to adopt his conclusion. I conclude instead that the bankruptcy trustee has not met his burden of showing that Heidi Heffron–Clark's Inherited IRA may not be exempted from the appellant's bankruptcy estate.

RECORD FACTS

In August of 2000, Ruth Heffron established an individual retirement account and named appellant Heidi Heffron–Clark, her daughter, as the sole beneficiary. Ruth Heffron died on September 19, 2001. Heffron–Clark established a Beneficiary Individual Retirement Account (commonly referred to as an Inherited IRA) in November 2001 and caused the remaining balance of her mother's account to be distributed to the Inherited IRA in December 2001. Beginning in 2002, Heffron–Clark and her husband, appellant Brandon Clark, took monthly distributions from the Inherited IRA, although neither was retired. (To make things easier for the reader, I will refer to the Clarks as the debtors and use "trustee" to refer to both the trustee and the Adilis.)

On October 28, 2010, the debtors filed a chapter 7 bankruptcy petition. Initially, they claimed the Inherited IRA as exempt under state law (Wis. Stat. § 815.18(3)(j)), but they amended their schedules later to claim it as exempt under federal law (11 U.S.C. § 522(b)(3)(C)) as well. Appellees William Rameker, the bankruptcy trustee, and Resul and Zinije Adili, d/b/a Kegonsa Plaza, a judgment creditor, objected to the debtors' exemption for the Inherited IRA, which was valued at the time at $293,338.

Their objection was upheld on May 10, 2011, when the bankruptcy court ruled in their favor, denying the exemption under both federal and state law. On this appeal, appellants challenge only the bankruptcy court's ruling regarding the federal exemption under 11 U.S.C. § 522(b)(3)(C). Dkt. # 2, at 1–2.

OPINION

A. *Background*

When a debtor files for bankruptcy, "all legal or equitable interests of the debtor in property" become part of the bankruptcy estate. 11 U.S.C. § 541(a)(1). A debtor may then place certain types of property beyond the reach of creditors to help her make a fresh start with an appropriate standard of living. 11 U.S.C. § 522(b)(1); *Rousey v. Jacoway*, 544 U.S. 320 (2005) (holding under previous version of § 522(d) that exemptions are designed to help debtors make fresh start and that petitioners could exempt their individual retirement accounts under § 522(d)(10)(E)). A debtor may elect to claim exemptions under § 522(d) of the Bankruptcy Code or, in the alternative, under state and federal non-bankruptcy law. *Id.* The Code also permits states to opt out of the substantive federal exemptions, in which case debtors domiciled in those states may not claim the exemptions under § 522(d). *Owen v. Owen*, 500 U.S. 305 (1991).

Although Congress has generally given latitude to the states regarding exemptions, it enacted a uniform exemption for tax-favored retirement funds that applies even if a debtor selects non-bankruptcy law or lives in a state that has opted out of federal exemptions. H.R. Rep. No. 109–31(I) (2005), *reprinted in* 2005 U.S.C.C.A.N. 88, 132. Both 11 U.S.C. § 522(d)(12) (the state provision) and

§ 522(b)(3)(C) (the federal provision) provide an exemption for "retirement funds to the extent that those funds are in a fund or account that is exempt from taxation" under certain sections of the Internal Revenue Code of 1986, including § 408. Thus, property is exempt under these provisions if (1) it qualifies as "retirement funds" and (2) the funds are in a fund or account that is tax-exempt under IRC §§ 401 (pension, profit-sharing and stock bonus plans), 403 (employee annuities), 408 (IRAs), 408A (Roth IRAs), 414 (employee benefit plans), 457 (deferred compensation plans for states and local government and non-profits), or 501(a) (trusts qualifying as exempt organizations).

The parties dispute whether Inherited IRAs of the kind held by appellants satisfy either requirement for exemption. Because a debtor's claim of exemption is presumptively valid, the trustee has the burden to prove by a preponderance of the evidence that the bankruptcy laws do not permit the debtors to claim the Inherited IRA as exempt. 11 U.S.C. § 522(*l*); Fed. R. Bankr. P. 4003(c). To do this, he has to show either that Heffron–Clark's Inherited IRA does not include retirement funds or that it is not tax-exempt under the applicable provisions of the Internal Revenue Code.

One point should be cleared up at the outset. The debtors have objected to what they view as the bankruptcy court's statement that the size of the Inherited IRA in this case was an additional reason to undertake an independent interpretation of § 522(b)(3)(C), instead of simply adopting the reasoning of prior cases. I doubt this is what the bankruptcy court meant, but the comment is irrelevant. Like this court, the bankruptcy court has an independent obligation to interpret the statute in

the absence of controlling authority, whatever the size of the account.

B. *Individual Retirement Accounts*

The traditional IRA is designed to give individuals an incentive to save for retirement. Income tax is deferred on any contributions made to the IRA and on income earned on those assets until they are withdrawn. 26 U.S.C. § 219(a); 26 U.S.C. § 408(e)(1). To promote the preservation of the assets until retirement, the law subjects any assets withdrawn before the account holder turns 59 1/2 to a ten percent penalty. 26 U.S.C. § 408(d)(1) (cross-referencing 26 U.S.C. § 72); *Rousey*, 544 U.S. at 327–29, 332–33 (describing limited exceptions to early distribution penalty). To insure that the funds are used for retirement, the holder of the account must begin taking minimum required distributions no later than the year in which he reaches 70 1/2. 26 U.S.C. § 408(b).

A spouse inheriting a traditional IRA may elect to treat the account as his own retirement account, roll over the funds into his own IRA or be treated as a non-spouse beneficiary. 26 U.S.C. § 408(d)(3); 26 U.S.C. § 401(a)(9)(B); 26 C.F.R. 1.408–8, Q–5. Beneficiaries who choose one of the first two options may make tax-deferred contributions to the account, but their use of the funds is subject to the same restrictions that were in place when the deceased spouse owned the account and that are designed to protect retirement savings in traditional IRAs and insure that the funds are used during retirement.

A variation of the traditional IRA comes into existence when a beneficiary such as Heffron–Clark inherits the assets of an IRA from someone other than her

spouse and puts the assets in an Inherited IRA. The beneficiary cannot treat the account as her own retirement account or roll over the inherited funds into her own IRA. 26 U.S.C. § 408(d)(3)(C)(i) & (ii). She must set up the account and maintain it in the name of the deceased IRA owner for the benefit of the beneficiary. 26 U.S.C. § 402(c)(11)(A); IRS Publication 590 at 20 (2006). She may not make contributions to the Inherited IRA and must begin taking distributions immediately, without regard to her age or employment status. 26 U.S.C. § 401(a)(9)(B). She may withdraw the entire amount immediately; if she does not, she must either withdraw all the funds from the account within five years or take annual minimum distributions over her lifetime. This extension of time enables the beneficiary to reduce the income tax liability she might face if she took the money in one lump sum distribution.

In addition to these IRAs, certain accounts established by employers or associations of employees may qualify for treatment as IRAs, 26 U.S.C. § 408(c), as may Roth accounts. 26 U.S.C. § 408A(a). None of these are at issue in this case.

C. *Exempting Inherited IRAs from Bankruptcy Estate*

1. *The meaning of the term "retirement funds"*

a. The bankruptcy court's interpretation of the term

The bankruptcy judge began his analysis of the question in this case with the plain meaning of the term "retirement funds," as used in 11 U.S.C. § 522(c)(3)(C). As he noted, the general presumption is that "'Congress intends the words in its enactments to carry their ordinary, contemporary, common meaning.'" *In re Clark*, 450 B.R. 858, 862 (Bankr. W.D. Wis. 2011) (quoting *Pioneer*

Investment Services Co. v. Brunswick Associates Ltd. Partnership, 507 U.S. 380 (1993)).

The Bankruptcy Code does not define retirement funds, so the bankruptcy judge looked to the dictionary definition. *Merriam Webster's Ninth New Collegiate Dictionary*, 1007 (9th ed. 1986), defines retirement as "withdrawal from one's position or occupation or from active working life." From this, the bankruptcy judge determined that the only funds that would qualify for exemption were those that were "retirement funds" in fact, "held in anticipation of 'withdrawal from one's position or occupation.'" *Id.* at 863.

Heffron–Clark's account did not qualify, the bankruptcy judge determined, because the funds she received from her mother could no longer be classified as anyone's retirement funds. Ruth Heffron had died and her daughter was required to take distributions from the account even though she was still working. The bankruptcy court declined to characterize the funds as retirement funds when "[t]hey are not segregated to meet the needs of, nor distributed on the occasion of, any person's retirement." *Id.* In his view, it was "the purpose of the fund and not its name, that determines the plain meaning of the phrase." *Id.*

The bankruptcy judge gave weight to the Internal Revenue Code's treatment of Inherited IRAs, noting the ways in which they were afforded different treatment from that given to traditional IRAs: a holder of an Inherited IRA cannot make contributions to the account, cannot roll over the account to her own IRA and cannot defer taking monthly distributions; a holder of a traditional IRA may do all of these things. He concluded by saying that he had not been able to determine "any primary legal source for the proposition that the debtors' Inherited

IRA is tax exempt." *Id.* at 864. "The debtors' Inherited IRA does not seem to meet any of [the] criteria listed in [26 U.S.C.] 408(a)," such as the requirements that contributions be made in cash and not exceed certain limits, that the account holder's interest in the account balance must be nonforfeitable and that the assets not be commingled with other property. *Id.*

b. The majority's interpretation of the term

As the debtors emphasize, with the exception of this case and one other, all of the bankruptcy courts and district courts that have addressed this precise issue have ruled in favor of the debtors. In all of the cases, the facts have been indistinguishable from those in this case. *In re Nessa*, 426 B.R. 312, 314 (8th Cir. BAP 2010); *In re Stephenson*, No. 11–cv–10848, 2011 WL 6152960 (E.D. Mich. Dec. 12, 2011); *Chilton v. Moser*, 444 B.R. 548, 552 (E.D. Tex. 2011); *In re Johnson*, 452 B.R. 804, 808 (Bankr. W.D. Wash. 2011); *In re Thiem*, 443 B.R. 832, 844 (Bankr. D. Ariz. 2011); *In re Kuchta*, 434 B.R. 837, 840 (Bankr. N.D. Ohio 2010); *In re Tabor*, 433 B.R. 469, 476 (Bankr. M.D. Penn. 2010); *In re Weilhammer*, No. 09–15148–LT7, 2010 WL 3431465 at *16 (Bankr. S.D. Cal. Aug. 30, 2010). The only court to rule otherwise was the bankruptcy court in Eastern Texas, *In re Chilton*, 426 B.R. 612 (Bankr. E.D. Tex. 2010), and its decision has since been overruled on appeal by the district court. *Chilton*, 444 B.R. 548.

The leading case for the majority view is *In re Nessa*, 426 B.R. 312, decided by the Bankruptcy Appellate Panel for the Eighth Circuit. In *Nessa*, the panel assumed that the term referred to funds set aside for retirement but, unlike the bankruptcy court in this case, it held that the term applied to any account that contained such funds, so long as the funds had been accumulated for re-

tirement purposes originally. The panel was not persuaded that the funds in such an account lost their character as retirement funds when they were transferred by inheritance to a non-spouse by a direct transfer from one trustee to another. In its view, § 522(d)(12) did not make such a distinction. "Section 522(d)(12) requires that the account be comprised of retirement funds, but it does not specify that they must be the *debtor's* retirement funds. The Trustee's definition of retirement funds would impermissibly limit the statute beyond its plain language." *Id.* at 314 (emphasis in original).

The panel found support for its conclusion in § 522(b)(4)(C), which provides that direct transfers of retirement funds from one fund or account exempt from taxation do not cease to qualify for exemption under subsection (d)(12) by reason of such a direct transfer. Section 522(b)(4)(C) was added in 2005 as part of Pub. L. 109–8, April 20, 2005. It provides in relevant part that

> A direct transfer of retirement funds from 1 fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986, under section 401(a)(31) of the Internal Revenue Code of 1986, or otherwise, shall not cease to qualify for exemption under paragraph (3)(C) or subsection (d)(12) by reason of such direct transfer.

(Oddly enough, this provision says nothing about where the funds must go, only where they must come from. Presumably the drafters meant to say something to the effect that "the funds are transferred directly to the trustee of another fund or account exempt from taxation," which is how the courts favoring exemption of Inherited IRAs have read it.) The panel read subsection

(C) of § 522(b)(4) as evidence that Congress had not intended the direct transfer of funds from a beneficiary's IRA to her Inherited IRA to change the character of those funds from retirement funds and prevent the beneficiary from claiming the inherited funds as exempt from her bankruptcy estate.

Finally, the panel found that the Inherited IRA was exempt from taxation under 26 U.S.C. § 408, because the funds in such an account are not taxed until they are withdrawn. The panel dismissed the trustee's argument that this was the wrong approach to apply because the rules governing Inherited IRAs are different from those governing traditional IRAs regarding the use, distribution and taxation of funds. Instead, it read § 408(e)(1) as providing that "[a]ny individual retirement account is exempt from taxation" and it pointed out that "[Section 408(e)(1)] does not distinguish between an inherited IRA and traditional types of IRAs." *Id.* at 315.

The panel found that the account at issue contained retirement funds; it had been established as a traditional IRA by the debtor's father; it passed to the beneficiary by inheritance and did not change its character because of the transfer; and it remained tax exempt under § 408(e); therefore, the beneficiary could exempt the funds in the account from her bankruptcy estate.

2. *Resolving the difference between the minority and majority positions*

The difference between the minority and majority positions comes down to one issue: Do retirement funds held in a traditional IRA account lose their character upon the death of the account owner before the funds pass to a non-spouse beneficiary? Judge Martin thought that the funds do not remain retirement funds after transfer

because the term "retirement funds" in § 522 refers only to funds set aside by the debtor to be used for her or her spouse's own retirement. The majority concluded that Congress never put any such qualification on the term. Obviously, the issue cannot be resolved by looking at the plain meaning of the statute. The statute is not clear, or plain, on this point.

One could argue on behalf of the minority position that the issue is not resolved by the fact that of all the property that § 522 specifies as potentially qualified for exemption from the estate, only the provisions relating to retirement funds is not limited by a reference to "the debtor." Such a limitation is implicit in the provisions because they are part of a statute that specifies what property belonging to the debtor can be subject to exemption from bankruptcy. In other words, the omission of any reference to "the debtor's interest" in subsection (C) of § 522(b) or subsection (12) of § 522(d) is of no significance because that qualification can be inferred from the fact all of the other listings relate to property in which the debtor has an interest. Such a reading supports Judge Martin's conclusion that the exemption is available only to "the debtor's retirement funds" and not to retirement funds accumulated by someone else but inherited by the debtor.

On the other hand, it is fair to infer that words excluded from a statute are excluded for a purpose. It is a particularly persuasive inference to draw in this instance, where the drafters omitted the same phrase from two statutes, subsection (C) of § 522(b)(3) and subsection (12) of § 522(d). The omission is particularly noteworthy in § 522(d), which has 11 other subsections, all of which contain a specific reference to "the debtor's interest" in certain property or "the debtor's right" to property. It is

a close call but I believe that the majority has read the statute correctly. I agree with the holding in *In re Nessa*, 426 B.R. at 314, that § 522(d)(12) and the identical provision in § 522(b)(3)(C) do not distinguish between an account built up by a decedent and inherited by a debtor and an account made up of contributions by the debtor herself. *See also Chilton v. Moser*, 444 B.R. at 552; *In re Johnson*, 452 B.R. at 808; *In re Thiem*, 443 B.R. at 844; *In re Kuchta*, 434 B.R. at 840; *In re Tabor*, 433 B.R. at 476; *In re Weilhammer*, 2010 WL 3431465 at *16.

Section § 522(d)(12) requires both that the funds in question be retirement funds and that they be in an account that is exempt from tax after they have been transferred. The parties have agreed that the funds in question were transferred directly from one account exempt from taxation in a trustee-to-trustee transaction to Heffron–Clark's Inherited IRA, so the only remaining question is whether they remained tax exempt after the transfer.

In this case, the bankruptcy court thought that the difference in treatment between traditional IRAs and Inherited IRAs meant that the latter do not qualify as tax-exempt funds after their transfer. It is true that the two funds are subject to different rules about the amounts and timing of distributions and whether they can be rolled over, but in both cases, the principal and interest earnings are exempt from income taxes until they are distributed. This is sufficient to make them both tax exempt. If there were any question about it, it would be resolved by 26 U.S.C. § 408(e)(1), which says expressly that "*[a]ny* individual retirement account is exempt from taxation under this subtitle" (emphasis added), with two exceptions of no relevance to this dispute. *See also Jankelovits v. C.I.R.*, 2008 WL 5330811 at *2 (U.S. Tax

Ct. 2008) (amounts transferred from trustee of decedent's IRA directly to trustee of another account are not treated as taxable distribution to beneficiary).

In summary, I am persuaded that the majority has reached the right result, both because its construction of the applicable statutes is more persuasive and because the result conforms with the directive to interpret close statutes in favor of the debtor. *In re Barker*, 768 F.2d 191, 196 (7th Cir. 1985) ("where an exemption statute might be interpreted either favorably or unfavorably vis-à-vis the debtor, [courts] should interpret the statute in a manner that favors the debtor"). I conclude therefore that the bankruptcy trustee has not met his burden of showing that Heidi Heffron–Clark's Inherited IRA cannot be exempted from the debtors' bankruptcy estate.

As a policy matter, there may be reason to question whether inherited funds should be exempt from bankruptcy just because they were held by the decedent in the form of an IRA and not as stock or gold bullion. It seems incongruous to allow the exemption from bankruptcy of an IRA worth more than a quarter-million dollars while limiting the exemption for a motor vehicle to $3,450. This, however, is a question for Congress and not for this court.

ORDER

IT IS ORDERED that the decision of the United States Bankruptcy Court for the Western District of Wisconsin denying the claim of exemption for appellant Heidi Heffron–Clark's Inherited Individual Retirement Account filed by appellants Heidi Heffron–Clark and Brandon Clark is REVERSED and REMANDED for further proceedings consistent with this opinion.

APPENDIX D

UNITED STATES BANKRUPTCY COURT FOR THE WESTERN DISTRICT OF WISCONSIN

No. 10-18035

In re: BRANDON C. CLARK and HEIDI K. HEFFRON-CLARK, Debtors.

May 10, 2011

MEMORANDUM DECISION

ROBERT D. MARTIN, Bankruptcy Judge.

The debtors, Brandon Clark and Heidi Heffron–Clark, filed for bankruptcy on October 29, 2010. Their chapter 7 Trustee, William Rameker ("trustee"), and a judgment creditor, Resul and Zinije Adili, d/b/a Kegonsa Plaza, objected to the debtor's claim of exemption in a Pershing Beneficiary IRA. A hearing was held on February 7, 2011 at which the parties agreed to submit the matter on briefs.

The parties have stipulated to certain facts, including: The debtor, Heidi Heffron–Clark was the beneficiary of an individual retirement account ("IRA"), which was established by her mother, Ruth Heffron on August 10, 2000. Ruth Heffron passed away on September 19, 2001. On November 28, 2001, Heidi Heffron–Clark established a beneficiary individual retirement account ("In-

herited IRA"), and on December 4, 2001, caused the funds from her mother's account to be distributed to the Inherited IRA. Since January 2002 the debtors have received monthly distributions from the Inherited IRA. On the debtors' Schedule C, they claim the Inherited IRA, valued at $293,338, exempt under Wis. Stat. § 815.18(3)(j), and now argue the asset is also exempt under 11 U.S.C. § 522(b)(3)(C).

A debtor's claim of exemptions is presumptively valid. *See* 11 U.S.C. § 522(*l*) ("the property claimed as exempt is exempt" unless "a party in interest objects"). Once a party in interest objects, the burden is on the objecting party to prove, by a preponderance of the evidence, that an exemption is improperly claimed. FRBP 4003(c) ("the objecting party has the burden of proving that the exemptions are not properly claimed . . ."); *see also In re Yonikus*, 996 F.2d 866, 873–74 (7th Cir. 1993); *see In re Moneer*, 188 B.R. 25, 28 (Bankr. N.D. Ill. 1995); *see In re Ross*, 210 B.R. 320, 323 (Bankr. N.D. Ill. 1997). A debtor is not "required to make an affirmative showing . . . that the claimed exemption [is] appropriate." *Gagne v. Bergquist*, 179 B.R. 884, 885 (D. Minn. 1994). But, the debtor must expressly characterize the claimed exemption within one of the exemption statutes. *Id.* at 885; *see e.g. Matter of Patterson*, 825 F.2d 1140, 1146–47 (7th Cir. 1987) (for an example, if not a model, of the analysis to be given to the debtors' characterization of property claimed to be exempt). The trustee must then introduce evidence that rebuts the "prima facie effect of a claimed exemption." *In re Hollar*, 79 B.R. 294, 296 (Bankr. S.D. Ohio 1987).

The Bankruptcy Code allows debtors to claim certain property as exempt, using either exemptions allowed under state law, or exemptions provided for in the Code.

See 11 U.S.C. § 522(b)(1). While this choice is available for debtors in Wisconsin and in some other U.S. states, the majority of states mandate that debtors use only the exemptions provided under state law. *See* 11 U.S.C. § 522(b)(1) (states can "opt out" of the exemptions provided by the Bankruptcy Code); *see* Susan V. Kelley, Ginsberg & Martin on Bankruptcy § 6.01[C] (5th ed. 2010) (as of 2010 approximately 34 states had elected to "opt out" of the federal bankruptcy exemptions). So in 2005, Congress saw fit to add two "uniform" exemptions that all debtors could claim regardless of whether they applied federal or state exemption law in their case. 11 U.S.C. § 522(b)(3)(B) & (C); *see* H.Rep. No. 109–31(1), 109th Cong., 1st Sess. 63–64 (2005), U.S. Code Cong. & Admin. News 2005, p. 88, *reprinted in* 2005 WL 832198 (Congress sought to create a uniform exemption for retirement funds, notwithstanding a debtor's possible limitations under state law). One of the new exemptions permits a debtor to claim as exempt:

> Retirement funds to the extent that those funds are in a fund or account that is exempt from taxation under section 401, 403, 408, 408(A), 414, 457, or 501(a) of the Internal Revenue Code of 1986. *See* 11 U.S.C. § 522(b)(3)(C).

In addition, Congress recently added § 522(b)(4)(C), which in relevant part states:

> (4) For purposes of paragraph (3)(C) and subsection (d)(12), the following shall apply:
>
> . . .
>
> (C) A direct transfer of retirement funds from 1 fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414,

> 457, or 501(a) of the Internal Revenue Code of 1986, under section 401(a)(31) of the Internal Revenue Code of 1986, or otherwise, shall not cease to qualify for exemption under paragraph (3)(C) or subsection (d)(12) by reason of such direct transfer.

This provision, by cross-reference, expands the exemption allowed under § 522(b)(3)(C) by including retirement accounts that resulted from a "trustee to trustee" transfer. *See In re Nessa*, 426 B.R. 312, 315 (8th Cir. BAP 2010). Because both § 522(b)(3)(C) and § 522(b)(4)(C) apply regardless of whether the debtors claim exemptions under state or federal law, the debtors in this case may characterize their Inherited IRA as exempt under 11 U.S.C. § 522(b)(3)(C) or Wis. Stat. § 815.18(3)(j).

In the last year, no fewer than eight bankruptcy courts have decided whether an inherited IRA falls within § 522(b)(3)(C), or § 522(d)(12).[1] *See In re Chilton*, 426 B.R. 612 (Bankr. E.D. Tex. 2010) *rev'd*, 444 B.R. 548 (E.D. Tex. 2011); *see In re Kuchta*, 434 B.R. 837, 843 (Bankr. N.D. Ohio 2010); *see In re Nessa*, 426 B.R. 312 (8th Cir. BAP 2010); *see In re Tabor*, 433 B.R. 469 (Bankr. M.D. Pa. 2010); *see In re Weilhammer*, 2010 WL 3431465 (Bankr. S.D. Cal. 2010); *see In re Thiem*, 443 B.R. 832 (Bankr. D. Ariz. 2011); *In re Mathusa*, 446 B.R. 601, 2011 WL 1134680 (Bankr. M.D. Fla. 2011); *In re Johnson*, 2011 WL 1674928 (Bankr. W.D. Wash. 2011).

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[1] The language of § 522(d)(12) is identical to that of § 522(b)(3)(C). *See* 11 U.S.C. § 522(d)(12); *see* 11 U.S.C. § 522(b)(3)(C). Together both sections allow an exemption for retirement accounts, regardless of whether the debtor claims exemptions under federal or state law. *See Id.* As a result, the two sections are often analyzed interchangeably. *See In re Nessa*, 426 B.R. 312 (8th Cir. BAP 2010).

These cases involved indistinguishable facts. *See Id.* Specifically, all include a debtor who inherited a family member's IRA sometime before filing bankruptcy. *See Id.* Upon filing bankruptcy, each debtor sought to exempt their interest in the IRA under either § 522(b)(3)(C), or § 522(d)(12).

The most cited of these cases, *Nessa*, was decided by the Bankruptcy Appellate Panel ("BAP") for the Eighth Circuit. *In re Nessa*, 426 B.R. 312 (8th Cir. BAP 2010). In a short opinion, the BAP found that § 522(d)(12) exempted *any* IRA in the hands of the debtor, whether or not the IRA was established by the debtors' themselves. *Id.* at 314–15 ("even though the contents of the Debtor's inherited account were the Debtor's father's retirement funds, . . . they remain in form and substance, 'retirement funds.'"). *Id.* The BAP also determined that IRC § 408(e) declared the debtor's inherited IRA tax exempt. *Id.* at 315 (*citing* 26 U.S.C. § 408(e) ("[a]ny individual retirement account is exempt from taxation."")). Finally, the BAP cited § 522(b)(4)(C), noting that the transfer of the IRA from the decedent's account to the beneficiary debtor's account "did not destroy the debtor's ability to claim the funds exempt under § 522(d)(12)." *Id.* For these reasons, the BAP concluded that the debtor's claimed exemption of her inherited IRA under § 522(d)(12) was proper.

Most subsequent cases rely on the reasoning of the Eighth Circuit BAP in *Nessa*.[2] *See Kuchta*, 434 B.R. at

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[2] The only case to decide otherwise was *In re Chilton*, 426 B.R. 612 (Bankr. E.D. Tex. 2010). The bankruptcy court in *Chilton* was convinced that § 522(b)(3)(C) exempted only the retirement funds of the *debtor* and did not apply to a nondebtor's retirement funds that were merely in the hands of the debtor. *Id.* at 618. On appeal the

843; *see Tabor*, 433 B.R. at 475–76; *see Weilhammer*, 2010 WL 3431465, *4–5; *see Thiem*, 443 B.R. at 845. However, none of the cases cited control this court and most of the cases deal with much smaller dollar amounts than we must. *See Chilton*, 426 B.R. at 613; *rev'd*, 444 B.R. 548 (E.D. Tex. 2011) (inherited IRA was worth $170,000); *see Tabor*, 433 B.R. at 470 (inherited account had estimated value of $105,100); *see Weilhammer*, 2010 WL 3431465 at *1 (inherited IRA contained at least $55,000); *see Thiem*, 443 B.R. at 835 (value of inherited IRA was approximately $10,700). Thus an independent analysis as to whether the debtors' Inherited IRA falls within § 522(b)(3)(C) is appropriate.

For a retirement account to fall within § 522(b)(3)(C), two elements must be present—"(1) the amount the debtor seeks to exempt must be retirement funds; and (2) those retirement funds must be in an account that is exempt from taxation under 401, 403, 408, 408(A), 414, 457, or 501(a) of the Internal Revenue Code." *In re Nessa*, 426 B.R. 312, 314 (8th Cir. BAP 2010). Absent evidence of a contrary intent by Congress, this court must assume that "Congress intends the words in its enactments to carry their 'ordinary, contemporary, common meaning.'" *Pioneer Inv. Servs. v. Brunswick Assocs.*, 507 U.S. 380, 389 (1993) (citing *Perrin v. United States*, 444 U.S. 37 (1979)). Where the Bankruptcy Code does not define a specific term, courts must "look to the ordinary meaning of [the] term." *Rousey v. Jacoway*, 544 U.S. 320, 328 (2005); *see also U.S. v. LaBonte*, 520 U.S. 751,

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District Court recently reversed this decision, relying primarily on the reasoning in *Nessa*. *See In re Chilton*, 444 B.R. 548 (E.D. Tex. 2011). In light of the District Court's decision, this court finds that *In re Chilton*, 426 B.R. 612, is no longer good law.

757 (1997) (all other interpretations of a statute "give way" to the statute's "plain meaning"); *see also Perrin v. U.S.*, 444 U.S. 37, 42, (1979) (a federal court's interpretation of a statute always begins with "the language of the . . . Act itself"). "Retirement funds" is not defined in the Bankruptcy Code so, we must decide if the property at issue constitutes "retirement funds" and only if it does, whether the funds are exempt from taxation under one of the enumerated Internal Revenue Code provisions.

The trustee argues that the Inherited IRA does not constitute retirement funds of the debtor (or any living person) and requests that this court look to the substance of the Inherited IRA and not to its name. The substance of the account, the trustee contends, will reflect funds that no longer hold any attributes of a traditional "retirement" account. The trustee notes that no one can make any contributions to the inherited IRA, as the debtor could to her own IRA (if she had one); and that the debtor does not receive distributions related to her retirement status, as she would with a traditional IRA. Ultimately the trustee argues that the attributes of the Inherited IRA are not those of what might be known in common usage to be a "retirement fund," and should not fall within § 522(b)(3)(C).

In response the debtors, relying heavily on the other cases already decided on this issue, argue that because the name "retirement account" once applied to the funds in the debtors' Inherited IRA the account still contains "retirement funds." Specifically, they point to the "plain meaning" of § 522(b)(3)(C), arguing that the statute does not indicate *whose* retirement the funds were set aside for, but rather requires only that the funds at issue were set aside for *someone's* retirement. The debtors also con-

tend the Inherited IRA is treated like any other IRA and is tax exempt under IRC § 408.[3]

Based on my reading of the plain language of § 522(b)(3)(C), the trustee has the more persuasive argument in this case. The first prong of the analysis requires that—"(1) the amount the debtor seeks to exempt must be retirement funds." *Nessa*, 426 B.R. at 314. Finding no ambiguity in the language of the statute, I must defer to the "common or ordinary meaning" of the phrase "retirement fund." *Rousey*, 544 U.S. at 330. "Retirement" is defined as the "withdrawal from one's position or occupation or from active working life." Webster's Ninth New Collegiate Dictionary 1007 (9th ed. 1986). Thus to qualify as exempt under § 522(b)(3)(C), the funds must be held in anticipation of "withdrawal from one's position or occupation." *Id.*

The debtors' Inherited IRA does not contain *anyone's* "retirement funds." Ruth Heffron established the retirement account, and elected her daughter as a beneficiary of the account. While living, the funds in Ms. Heffron's account were indeed funds for *her* retirement—that is held in anticipation of one day withdrawing from her occupation. After Ms. Heffon passed away, however, the funds passed to her beneficiary. The funds could no longer be classified as anyone's retirement funds—Ms. Heffron had died and was incapable of retiring further or using the funds during her retirement, and her daughter was able (in fact obliged) to take distributions from the account while both of the debtors contin-

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[3] To avoid confusion, hereinafter I will place "IRC" before the code section when I refer to a section from the Internal Revenue Code under title 26 of the United States Code.

ued to work. Currently, the funds are held in anticipation of no person's retirement and likewise cannot, under the plain meaning of the statute, constitute "retirement funds." They are not segregated to meet the needs of, nor distributed on the occasion of, any person's retirement.

Other courts that have directly dealt with this issue have all found that the contents of the inherited IRA remain in form and substance "retirement funds" when they are passed to the beneficiary. *See Nessa*, 426 B.R. at 314–15; *see Kuchta*, 434 B.R. at 843–44; *see Tabor*, 433 B.R. at 475–76; *see Weilhammer*, 2010 WL 3431465 at *5. In arriving at this conclusion, most courts dwell on the fact that inherited IRAs contain funds set aside for *someone's* "retirement" and in most cases are still characterized by the Internal Revenue Service ("IRS") as individual retirement accounts. *See Id.* This reasoning is unpersuasive however, and seems to avoid the plain meaning of the statute. The fact that the funds were once held for a decedent's retirement is irrelevant. As noted above, while the funds may have been set aside originally for retirement purposes, once the decedent dies the funds are no longer held by the beneficiary for that purpose. The IRS may refer to an "inherited IRA" as an "IRA," but that label is without significance. *See* I.R.S. Publication 590, p. 18 (2010) (discussing tax treatment of an "inherited IRA"). It is the purpose of the fund, and not its name, that determines the plain meaning of the phrase. For this reason, I cannot agree with the other courts' interpretation of "retirement funds" in § 522(b)(3)(C).

Were we to peek behind the curtain of "plain meaning" it would seem beyond any quibble that Congress intended to permit debtors to retain amounts saved for

their retirement and not sums inherited from their parents. Because this obvious point supports the common sense reading of the words that Congress chose for the statute, the resort of other courts to rely on income tax labels is hard to explain.

The Tax Code's treatment of "inherited IRAs" also reflects the true nature of the accounts. "Inherited IRAs" and their underlying purpose were contemplated by Congress with the enactment of the Pension Protection Act of 2006. *See* CCH, Pension Protection Act of 2006—Law, Explanation and Analysis, ¶ 945. Specifically, Congress sought to eliminate the adverse tax treatment to a nonspouse beneficiary that occurred when a beneficiary received a lump sum distribution from a decedent's IRA creating an immediate taxable event on the entire amount distributed. *Id.* From this reasoning came Congress' broad endorsement of "inherited IRAs" as a means of deferring the tax owed on the proceeds of a decedent's IRA over the life of the beneficiary. *Id.* In enacting this policy Congress set forth various rules to ensure the holder of an "inherited IRA" was not treated the same as a holder of an IRA. *See* 26 U.S.C. § 408(d)(3)(C). For example, a holder of an "inherited IRA" cannot make contributions to the account, cannot roll the funds in the account over to their own IRA, and must begin taking monthly distributions immediately, regardless of age or employment status, from the account in accordance with the IRS distribution guidelines. *See* 26 U.S.C. § 408(d)(3)(C); *see* 26 U.S.C. § 408(a)(6). This treatment is different for a holder of an IRA, who cannot withdraw, without penalty, funds from their account prior to a designated retirement age, and who can make tax deferred contributions to their account for purposes of saving for their retirement. 26 U.S.C. § 408. In light of these differences, it is clear that Congress did

not intend for "inherited IRAs" to serve as "retirement accounts," but rather to serve as a conduit that allows beneficiaries to defer but not avoid income tax on the distributions from an IRA *that they inherit.*

No one has cited (and I can find none) any primary legal source for the proposition that the debtors' Inherited IRA is tax exempt. As authority that their Inherited IRA is tax exempt the debtors point to IRC § 408(e), which provides that "any individual retirement account is exempt from taxation . . .". 26 U.S.C. § 408(e). While the statute does indeed exempt from tax "any individual retirement account," I find no sources that suggest an "inherited IRA" is considered "any individual retirement account" under IRC § 408. To fall within IRC § 408, the fund must meet certain criteria related to distribution requirements and asset regulation. *See* 26 U.S.C. § 408(a) (requiring that "contributions" into the account be made "in cash" and not exceed the limits set forth under § 219(b)(1)(A); "[t]he interest of an individual in the balance in this account [be] nonforfeitable;" "[t]he assets of the trust not be commingled with other property . . .;" etc.). The debtors' Inherited IRA does not seem to meet any of those criteria listed in IRC § 408(a).

Other courts that have decided this issue have cited other bankruptcy court decisions and/or IRS publications and regulations in support of their finding that "inherited IRAs" are tax exempt. *See Thiem*, 443 B.R. at 839 (citing tax regulations); *See Nessa*, 426 B.R. at 315 (citing generally IRC § 408(e) with no supporting authority); *see Kuchta*, 434 B.R. at 843–44 (citing the *Nessa* decision and generally IRC § 408); *see Tabor*, 433 B.R. at 475–76 (citing the *Nessa* decision); *see Weilhammer*, 2010 WL 3431465 at *5 (citing generally IRC § 408(e) with little other authority). These authorities are unper-

suasive, especially when the IRS publications and regulations seemingly infer that *some* "inherited IRAs" are tax exempt without referencing a primary legal source. *See* I.R.S. Publication 590, p. 18 (2010) ("Like the original owner, [the beneficiary of an inherited IRA] *generally* will not owe tax on the assets in the IRA until you receive distributions from it") (emphasis added). From the secondary tax sources, it is not clear that the debtors' Inherited IRA is indeed tax exempt and the absence of direct legal authority is crippling to the argument that it is so. For this reason, I cannot conclude that the debtors' inherited IRA is governed by IRC § 408 or is tax exempt under that section.

Finally, § 522(b)(4)(C) does not help the debtor in this case. That poorly drafted statute seems to apply only if by reason of a "direct transfer of retirement funds from 1 fund or account that is exempt from taxation" a retirement account loses its exemption status under § 522(b)(3)(C). 11 U.S.C. § 522(b)(4)(C). Here, the debtors' Inherited IRA does not qualify for exemption status because the account does not contain "retirement funds." Each of the required distributions from the fund is taxable and the holding of the funds by itself is not a taxable event. Section 522(b)(4)(C) simply does not apply.

The debtors did initially, and may still, argue that their Inherited IRA qualifies under Wis. Stat. § 815.18(3)(j) as exempt. Wis. Stat. § 815.18(3)(j) states in relevant part:

> (3) EXEMPT PROPERTY. The debtor's interest in or right to receive the following property is exempt . . .
>
> (j) *Retirement benefits.* (1) Assets held or amounts payable under any retirement, pen-

> sion, disability, death benefit, stock bonus, profit sharing plan, annuity, individual retirement account, individual retirement annuity, Keogh, 401–K or similar plan or contract providing benefits by reason of age, illness, disability, death or length of service and payments made to the debtor therefrom.
>
> (2) The plan or contract must meet one of the following requirements: (a) The plan or contract complies with the provisions of the internal revenue code ... Wis. Stat. § 815.18(3)(j).

On facts indistinguishable from the present case, the issue of whether an inherited IRA could be claimed exempt under Wis. Stat. § 815.18(3)(j) was decided by a bankruptcy court in the Eastern District of Wisconsin. *See In re Kirchen*, 344 B.R. 908 (Bankr. E.D. Wis. 2006). The court first found that the state exemption did not apply to inherited IRAs, because the "benefits" from inherited IRAs were distributed immediately and *not* by reason of "age, illness, disability, death or length of service ..." as required by the exemption. *Id.* at 912. The court also found that the inherited accounts were not governed by the provisions of IRC § 408, and likewise could not be deemed to comply with the Internal Revenue Code. *Id.* at 913.

The court's reasoning in *Kirchen* is sound and the conclusion that the funds of an inherited IRA are not within the meaning of Wis. Stat. § 815.18(3)(j)(1), which requires that the benefits of such an account be distributed "by reason of age, illness, disability, death ..." is thus compelled. In this case the debtors received minimum distributions from the Inherited IRA as permitted by the IRS guidelines. The debtors are entitled to re-

ceive benefits immediately with no regard to their age, physical health, or working status. For this reason, the debtors' Inherited IRA does not fall within Wis. Stat. § 815.18(3)(j) or within § 522(b)(3)(C).

The trustee and judgment creditors in this case have met their burden by rebutting the debtors' claimed exemption. The debtors' Inherited IRA does not contain "retirement funds" within the common meaning of § 522(b)(3)(C). The trustee and judgment creditors' objections must be sustained, and the debtors' exemption claimed under Wis. Stat. § 815.18(3)(j) and § 522(b)(3)(C) is disallowed.

ORDER

The trustee and judgment creditors' objections to the debtors' claimed exemption of their inherited IRA is SUSTAINED. The debtors' exemption of their inherited IRA is DISALLOWED.

OPPOSITION BRIEF

No. 13-299

RECORD AND BRIEFS

IN THE

Supreme Court of the United States

BRANDON C. CLARK AND HEIDI K. HEFFRON-CLARK,
Petitioners,

v.

WILLIAM J. RAMEKER, TRUSTEE, *et al.*,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether funds held in a non-spousal inherited Individual Retirement Account—which the beneficiary must withdraw according to a certain timetable without regard to age or retirement status—are "retirement funds" exempt from the claims of the beneficiary's creditors under Section 522 of the Bankruptcy Code, 11 U.S.C. §522(b)(3)(C), (d)(12).

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IN THE

Supreme Court of the United States

No. 13-299

BRANDON C. CLARK AND HEIDI K. HEFFRON-CLARK,
Petitioners,

v.

WILLIAM J. RAMEKER, TRUSTEE, *et al.*,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF IN OPPOSITION

STATEMENT

Chapter 7 of the Bankruptcy Code permits eligible individual debtors to obtain a discharge of pre-bankruptcy debt by surrendering their property to a Chapter 7 trustee, who distributes the property to creditors. To ensure that the debtor is not left destitute post-bankruptcy, however, the Bankruptcy Code permits debtors to exempt their interests in certain specified assets from creditors' claims. *See* 11 U.S.C. §522. As relevant here, a debtor may exempt "retirement funds to the extent that those funds are in a fund or account that is exempt from taxation under" one of various sections of the Tax Code. *Id.* §522(b)(3)(C), (d)(12).

The question presented here is whether funds held by a debtor in a non-spousal inherited Individual Retirement Account (an "inherited IRA") are "retirement funds" that are exempt from creditors' reach under Section 522. As the Seventh Circuit held below (Pet. App. 7a), the question is not a close one, and the answer is no: Funds held in a non-spousal inherited IRA are not retirement funds because the beneficiary need not—and, indeed, *cannot*—save the funds tax-deferred for his or her retirement.

Specifically, the beneficiary of an inherited IRA, unlike the owner of a typical IRA, may withdraw any amount of money from the account at any time without a tax penalty. Moreover, the beneficiary may not make any additional contributions to the inherited IRA, may not roll over its contents to another IRA, and is *required* to withdraw all the inherited IRA's funds on a certain timetable without regard to the beneficiary's age or retirement status. In short, funds in a non-spousal inherited IRA may be used freely for purposes of present consumption and are not set aside for anyone's retirement. Accordingly, they are not "retirement funds" exempt from creditors' claims.

Only two courts of appeals have addressed this question. And although those two courts have reached different outcomes, it would be premature for this Court to intervene now. The Fifth Circuit addressed the issue first and reached the wrong conclusion, failing to give more than cursory consideration to the federal tax rules that govern inherited IRAs and make them entirely different in form and substance from traditional IRAs. Now that the Seventh Circuit has persuasively explained why the nature of inherited IRAs compels the conclusion that they do not contain anyone's "retirement funds," other courts of appeals are likely to

follow suit. And the Fifth Circuit—which has not yet had the opportunity to decide whether to hear the issue en banc—may very well, when that opportunity arises, revisit the issue and reach the correct result on its own. Because this split may thus heal itself, further percolation is necessary to determine whether this issue warrants this Court's review.

A. Chapter 7 Bankruptcy And Exemptions

"The principal purpose of the Bankruptcy Code is to grant a 'fresh start' to the 'honest but unfortunate debtor.'" *Marrama* v. *Citizens Bank of Mass.*, 549 U.S. 365, 367 (2007). Chapter 7 of the Code does so by allowing an eligible individual debtor to file a bankruptcy petition that creates an estate comprised of "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. §541(a)(1). A trustee is then appointed to liquidate estate property and distribute any proceeds to the debtor's creditors. *Id.* §§701, 704(a)(1). In return, the debtor obtains a discharge of his or her pre-petition debt (subject to certain narrow exceptions). *Id.* §§523, 727. The discharge "prohibit[s] creditors from attempting to collect or to recover the debt." *Tennessee Student Assistance Corp.* v. *Hood*, 541 U.S. 440, 447 (2004); *see* 11 U.S.C. §524.

To permit the debtor to obtain or retain certain life or work necessities, the Code allows a debtor to "exempt" his or her interest in certain property, typically up to a set amount, from being made part of the bankruptcy estate and distributed to creditors. 11 U.S.C. §522(b); *Rousey* v. *Jacoway*, 544 U.S. 320, 325 (2005). Unless a debtor's State has opted out of the federal scheme, a debtor may choose either state-law exemptions, supplemented by certain federal exemptions, or the federal exemptions set out in the Bankruptcy Code.

Id. §522(b)(1); *Owen* v. *Owen*, 500 U.S. 305, 308 (1991). Under the federal exemptions, for instance, a debtor may exempt up to $22,975 of equity in a residence, 11 U.S.C. §522(d)(1), and up to $3,675 of equity in a motor vehicle, *id.* §522(d)(2). Because "every asset the Code permits a debtor to withdraw from the estate is an asset that is not available to ... creditors," the exemptions Congress has chosen reflect a careful balance between the interests of debtors and creditors. *Schwab* v. *Reilly*, 130 S. Ct. 2652, 2667 (2010).

This case involves the scope of the Section 522 exemption—available to all debtors, whether they elect state or federal exemptions—for "retirement funds" held in certain tax-exempt retirement accounts. Under that provision, a debtor may exempt "retirement funds to the extent that those funds are in a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986." 11 U.S.C. §522(b)(3)(C), (d)(12). The purpose of the exemption is to ensure that bankruptcy does not drain personal resources necessary for retirement.[1] Both parties agree that Section 522 permits debtors to exempt funds held for their own retirement

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[1] Congress added the exemption at issue here in the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 23. Before then, courts of appeals had divided as to whether IRAs were exempt under a separate provision allowing a debtor to exempt his or her "'right to receive ... a payment under a stock bonus, pension, profitsharing, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service.'" *Rousey*, 544 U.S. at 323-324; *see* 11 U.S.C. §522(d)(10)(E). While Congress was considering a legislative fix to resolve this question, this Court held that non-inherited IRAs were exempt under Section 522(d)(10)(E) because such IRAs "confer a right to receive payment on account of age." *Rousey*, 544 U.S. at 334-335.

in traditional IRAs, which are exempt from taxation under Section 408 of the Tax Code. The question here is whether funds held in *inherited* IRAs—which, as described in detail below, differ in crucial ways from traditional IRAS—are likewise exempt.

B. IRAs And Inherited IRAs

A traditional Individual Retirement Account "is a personal saving plan" that provides certain "tax advantages for setting aside money for retirement." IRS, *Publication 590: Individual Retirement Arrangements (IRAs)* 3 (2013) (Publication 590); *see* 26 U.S.C. §408(a). The attributes of an IRA reflect Congress's objective that such accounts be used as a "substitute for wages" in retirement and not as "mere savings accounts." *Rousey*, 544 U.S. at 329. The owner of an IRA thus may contribute money to the account over the course of his or her lifetime. Such contributions are generally tax-deductible, 26 U.S.C. §219(a), and the assets held in an IRA are not taxed until they are distributed, *id.* §408(e)(1).

IRA owners retain a nonforfeitable right to the balance held by the IRA, 26 U.S.C. §408(a)(4), but "[t]hat right is restricted by a 10-percent tax penalty that applies to withdrawals from IRAs made before the accountholder turns 59½," *Rousey*, 544 U.S. at 327; *see* 26 U.S.C. §72(t)(1). The penalty on premature withdrawals, by "deterr[ing] ... early access to IRAs," *Rousey*, 544 U.S. at 327, is consistent with Congress's intention that IRAs be used for retirement purposes, not for present consumption. By law, IRA owners can begin to make penalty-free withdrawals after age 59½, but they "must begin to withdraw funds" at age 70½, a time when "they are likely to be retired and lack wage income." *Id.* at 331; *see* 26 C.F.R. §1.408-2(b)(6). Re-

cent statistics show that approximately 75% of households taking withdrawals from traditional IRAs contain at least one retired individual. *See* Investment Company Institute, *ICI Research Perspective* 20 (Dec. 2012), *available at* http://www.ici.org/pdf/per18-08.pdf. Only seven percent of households that own a traditional IRA and are headed by an individual under 59 took withdrawals. *Id.*

The characteristics of an IRA change substantially when an IRA owner dies. In that case, the owner's interest in the IRA passes to a beneficiary. *See* Publication 590 at 18. If the beneficiary is a spouse, the spouse can elect to treat the IRA as his or her own, roll the IRA over into an existing IRA, or treat himself or herself as a non-spousal beneficiary. *See id.* If the named beneficiary is not a spouse of the decedent (or if the spouse elects a non-spousal beneficiary designation), the Tax Code treats the account as an "inherited" IRA. 26 U.S.C. §408(d)(3)(C)(ii).

An inherited IRA differs fundamentally from a traditional IRA. A beneficiary of an inherited IRA may defer paying taxes on the inherited funds for a specified amount of time, thus avoiding a potentially large tax bill at the time of the original owner's death. But in crafting the rules governing inherited IRAs, Congress made it clear that such accounts were not themselves intended as retirement vehicles. A person who inherits an IRA receives only a beneficial interest and does not own the account. *See* Joint Committee on Taxation, *Technical Explanation of H.R. 4, The "Pension Protection Act of 2006"* at 178 (2006); Publication 590 at 18. Accordingly, the beneficiary cannot, for example, make additional contributions to the account and may not roll the account over into a separate IRA. Publication 590 at 18. Regardless of age or retirement

status, a beneficiary may elect to receive distributions from the account immediately without paying any tax penalty. 26 U.S.C. §72(t)(2)(A)(ii).

Perhaps most significantly, a beneficiary of an inherited IRA *must* begin to receive distributions from the account within a certain time following the previous owner's death. 26 U.S.C. §§408(a)(6), 401(a)(9)(B); 26 C.F.R. §1.408-2(b)(7); *see* Bennett *et al.*, *Taxation of Distributions From Qualified Plans* ¶17.07[4][b][iii] (2012) ("The restrictions on inherited IRAs have the effect of requiring a non-spouse beneficiary to begin receiving taxable distributions from the IRA in accordance with the Code's minimum required distribution rules."). Specifically, if an IRA owner dies before the age of 70½, a non-spouse beneficiary generally must either withdraw the entire balance of the account within five years or take annual minimum distributions from the account beginning one year following the owner's death. 26 C.F.R. §1.408-8; Cartano, *Taxation of Individual Retirement Accounts* §32.02[A][1] (2013).

C. Factual Background And Proceedings Below

1. In 2000, Ruth Heffron established an IRA with her daughter, petitioner Heidi Heffron-Clark, as the beneficiary. C.A. App. 30 (Joint Statement of Facts ¶5). When her mother died in 2001, Ms. Heffron-Clark transferred the funds from her mother's IRA to an inherited IRA. *Id.* at 31 (¶¶6-7). The year-end value of the inherited IRA in 2001 was approximately $453,000. *Id.* (¶11). Beginning in 2002, Ms. Heffron-Clark—who was not retired—began to take monthly distributions from the inherited IRA, as she was required to do under the Tax Code. *Id.* (¶9). When Ms. Heffron-Clark and her husband, petitioner Brandon Clark, filed for Chapter 7 bankruptcy in 2010, the inherited IRA was

valued at approximately $293,000 (Pet. App. 10a), reflecting in part the required withdrawals Ms. Heffron-Clark had made before bankruptcy.[2]

In bankruptcy, petitioners claimed that the inherited IRA was exempt and thus beyond the reach of creditors under Section 522 of the Bankruptcy Code. Respondents—Chapter 7 Trustee William J. Rameker and petitioners' judgment creditors, Resul and Zinije Adili d/b/a Kegonsa Plaza—objected, arguing, among other things, that the inherited IRA does not contain "retirement funds." C.A. App. 97-103. The bankruptcy court sustained the objections, reasoning that retirement funds are those held for the owner's retirement, meaning a "'withdrawal from one's position or occupation or from active working life.'" Pet. App. 29a. The bankruptcy court concluded that petitioners' inherited IRA "does not contain *anyone's* 'retirement funds'" because the mother was deceased and her daughter was receiving "distributions ... while both" she and her husband "continued to work." *Id.* at 29a-30a. The court reasoned that its conclusion was consistent with Congress's purpose in exempting IRAs from bankruptcy, which was to "permit debtors to retain amounts saved for their retirement and not sums inherited from their parents," *id.* at 30a-31a, and with the fundamentally different attributes of IRAs and inherited IRAs, *id.* at 31a.

2. The district court disagreed and upheld the exemption. Pet. App. 21a. The court believed the question could not "be resolved by looking at the plain

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[2] Ms. Heffron-Clark continued to withdraw funds from her inherited IRA following the filing of her bankruptcy petition, including a withdrawal of $10,500 in November 2010. C.A. App. 31 (Joint Statement of Facts ¶12).

meaning of the statute," and it questioned "[a]s a policy matter" why "inherited funds should be exempt from bankruptcy just because they were held by the decedent in the form of an IRA and not as stock or gold bullion." *Id.* at 19a, 21a. Nevertheless, the court held that the funds in inherited IRAs could be deemed "retirement funds" under Section 522 because at one point in time they had been Ms. Heffron-Clark's mother's retirement funds. *Id.* at 20a-21a.

3. The Seventh Circuit reversed the district court's decision. Pet. App. 1a, 7a. Focusing on the attributes of an inherited IRA under federal tax law, the court of appeals explained that, unlike a typical IRA, "an inherited IRA is a time-limited tax-deferral vehicle, ... not a place to hold wealth for use after the new owner's retirement." *Id.* at 2a. The court reasoned that by the time of petitioners' bankruptcy "the money in the inherited IRA did not represent *anyone's* retirement funds" but was a "pot of money" petitioners could use (and were using) "for current consumption." *Id.* at 4a.

Because the inherited IRA did not contain "savings reserved for use after [its] owner[] stop[ped] working," it did not contain retirement funds. Pet. App. 7a. The Seventh Circuit recognized that the Fifth Circuit had reached a different result in *In re Chilton*, 674 F.3d 486 (5th Cir. 2012), but it did not "think the question close," concluding that "inherited IRAs represent an opportunity for current consumption, not a fund of retirement savings," and thus are not "retirement funds" under the Bankruptcy Code. *Id.*[3]

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[3] The panel circulated its opinion to all active members of the court prior to issuance, none of whom requested en banc review. Pet. App. 7a. The court separately denied petitioners' request for rehearing en banc and panel rehearing. *Id.* at 8a.

REASONS FOR DENYING THE PETITION

The Seventh Circuit correctly resolved the question presented. Although one panel of the Fifth Circuit had previously reached a contrary conclusion, that court has yet to consider whether to hear the issue en banc, and no other court of appeals has yet considered the issue at all. There is accordingly every opportunity for this shallow split to heal itself, and this Court's intervention now is not needed.

I. THE DECISION BELOW IS CORRECT

As the Seventh Circuit noted, the question presented here is not a close one, and the court of appeals correctly resolved it. Indeed, the petition barely suggests otherwise. The text, history, and purpose of Section 522 compel the conclusion that it does not exempt funds in an inherited IRA. Such funds may be used freely for present consumption—and, indeed, *must* be withdrawn from the account according to a specified timetable—without regard to the beneficiary's age or employment status. Accordingly, they are not "retirement funds."

1. The interpretation of the Bankruptcy Code begins "'where all such inquiries must begin: with the language of the statute itself.'" *Ransom* v. *FIA Card Servs., N.A.*, 131 S. Ct. 716, 724 (2011). The text of Section 522 fully supports the Seventh Circuit's ruling. The Bankruptcy Code does not define "retirement funds." Courts must therefore look to the "ordinary meaning" of that phrase. *Id.* A "fund" is defined as, among other things, "a sum of money or other resources[,] the principal or interest of which is set apart for a specific objective or activity." *Webster's Third New International Dictionary Unabridged* 921 (1976).

Retirement is the "act of retiring or state of being retired," *Id.* at 1939, and "retire" means "to withdraw from office, public station, business, occupation, or active duty,' *id.* Thus, retirement funds are resources to be used after one has ceased employment, commonly as wage substitutes. *See Rousey* v. *Jacoway*, 544 U.S. 320, 331-332 (2005) (finding that funds held in traditional IRAs typically "substitute[] for wages" in retirement).

Funds held in an inherited IRA simply are not "retirement funds" within the ordinary meaning of that phrase. Notwithstanding their name, inherited IRAs have nothing to do with anyone's retirement. Rather, they are simply vehicles for providing temporary tax-deferred status to inherited assets that would otherwise be subject to immediate taxation.

A comparison to traditional IRAs makes that point clear. The owner of a traditional IRA may contribute up to a certain amount each year. 26 U.S.C. §§408(a)(1), 219(b)(1), (b)(5). Taxes on the contribution amount will be deferred until the funds are withdrawn. *Id.* §408(e)(1). Funds in a traditional IRA may be rolled over to a new IRA without any tax penalty, provided certain requirements are met. *Id.* §408(d)(3). Before age 59½, an IRA owner may not withdraw funds from the IRA, absent exceptional circumstances, without paying a substantial tax penalty. *Id.* §72(t)(1). Reflecting that funds in an IRA are designed to be used for the owner's retirement, the owner *may* begin taking distributions from an IRA at age 59½ without penalty, *id.* §72(t)(2)(A)(i), and *must* begin taking distributions at age 70½, Publication 590 at 34.

None of these defining characteristics of a traditional IRA is true of an inherited IRA. The beneficiary of an inherited IRA may not make any contributions to

the inherited IRA, tax-deferred or otherwise. Publication 590 at 18. The beneficiary may not roll over the funds into his or her own IRA. *Id.*; 26 U.S.C. §408(d)(3)(C). The beneficiary may withdraw all the funds in the inherited IRA immediately without any tax penalty, regardless of the beneficiary's age or retirement status. 26 U.S.C. §72(t)(2)(A)(ii). And the beneficiary *must* begin taking distributions from the inherited IRA promptly, again without regard to age or retirement status. *Id.* §§408(a)(6), 401(a)(9)(B); 26 C.F.R. §1.408-8. In short, as the Seventh Circuit held, "an inherited IRA is a time-limited tax deferral vehicle ... not a place to hold wealth for use after the new owner's retirement." Pet. App. 2a.

This case well illustrates the point. As explained above, although still employed, petitioner Ms. Heffron-Clark began taking distributions from the inherited IRA in January 2002, one year following Mrs. Heffron's death, and has made substantial withdrawals from the account for more than a decade. In fact, she has continued to make withdrawals even after filing for bankruptcy, including a withdrawal of $10,500 one month after so filing. *See supra* pp.7-8 & n.2. Under these circumstances, it makes no sense to call the money in the inherited IRA "retirement funds," or to permit petitioners to withhold those funds from their creditors.

In fact, treating money in an inherited IRA as "retirement funds" would disserve the purposes of the Bankruptcy Code. *Cf. Ransom*, 131 S. Ct. at 725 ("consideration of BAPCPA's purpose strengthens our reading of the term 'applicable'"). The Code's exemptions are not designed "to provide a windfall to debtors but ... to provide them with the necessaries by which to live and make a living." 3A Singer & Singer, *Statutes and Statutory Construction* §70:5 (7th ed. 2010). Here,

the specific object of the exemption for "retirement funds" is plain: to shield from creditors funds in IRAs and other common retirement savings vehicles so that debtors do not lose their retirement savings in bankruptcy.[4] Congress expressed no intent to permit debtors to withhold from their creditors inherited funds that are not set aside for the debtor's (or anyone's) retirement.

Exempting funds in inherited IRAs—"liquid asset[s] which may be accessed ... without penalty," *In re Sims*, 241 B.R. 467, 470 (Bankr. N.D. Okla. 1999)—would grant debtors an irrational windfall. In this case, for example, when Ms. Heffron-Clark inherited her mother's IRA, she could have simply withdrawn the entire balance and invested or otherwise used the money received. No one would contend *that* money was exempt. That she instead chose to put the funds in an inherited IRA, thus allowing the money to grow tax-free (until withdrawn), should make no difference. The money may still be used for current consumption, just like money in a savings account, and indeed may *not* be saved for retirement in the manner permitted by a traditional IRA. Treating such funds as exempt from creditors would "threaten[] to convert a fresh start into a free pass" and disrupt the careful balance between the interests of debtors and creditors struck by the

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[4] *See* H.R. Rep. No. 109-31 pt. 1, at 63-64 (2005); 151 Cong. Rec. S2459, S2462 (daily ed. Mar. 10, 2005) (statement of Sen. Hatch) ("This bill creates new legal protections for a large class of retirement savings in bankruptcy."); 151 Cong. Rec. E704 (daily ed. Apr. 19, 2005) (statement of Rep. Moore) (stating that BAPCPA "upholds the Supreme Court's recent ruling" in *Rousey* and that "IRAs now join 401(k)s, Social Security, and *other benefits tied to age, illness or disability* that are afforded protection under bankruptcy law").

bankruptcy exemptions. *Schwab* v. *Reilly*, 130 S. Ct. 2652, 2667 (2010).[5]

2. Petitioners raised two closely related contrary arguments below, neither of which is persuasive. First, petitioners argued that the money in the inherited IRA was in fact "set aside" for retirement purposes by its original owner. *See* Appellees' C.A. Br. 9; *see also In re Chilton*, 674 F.3d 486, 489 (5th Cir. 2012). Second, they contended that Section 522(b)(3)(C) is not expressly limited to the "debtor's" interest in the exempted property. *See* Appellees' C.A. Br. 10-13; *see also Chilton*, 674 F.3d at 489; *In re Nessa*, 426 B.R. 312, 314-315 (B.A.P. 8th Cir. 2010).

As an initial matter, even if the funds held in an inherited IRA did represent *someone's*, though not the debtor's, retirement funds, Section 522 of the Bankruptcy Code still would not shield those funds. Under the Bankruptcy Code, the debtor is limited to exempting his or her own interest in property, because only the debtor's interests in property form part of the bankruptcy estate that is created when the debtor files for bankruptcy. 11 U.S.C. §541(a)(1). Thus, it makes no sense to say that a debtor could exempt property from the bankruptcy estate because someone else could claim an interest in the property as "retirement funds."

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[5] Moreover, unlike many other exemptions, Section 522(b)(3)(C) imposes no dollar limit on the permitted exemption. Thus, exempting inherited IRAs from bankruptcy could allow debtors to shield substantial amounts of money from creditors, even though debtors could, immediately following bankruptcy, simply withdraw those funds without penalty. Such a construction of the Bankruptcy Code would make little sense. That is particularly so because, unlike a spousal inherited IRA, the statute imposes no restriction on who may be a beneficiary.

In any event, both of petitioners' arguments fail for an even more basic reason: When petitioners claimed their exemption, "the money in the inherited IRA did not represent *anyone's* retirement funds." Pet. App. 4a. When petitioners filed for bankruptcy, the inherited IRA was neither petitioners' nor the original owner's retirement funds: The money was not being saved for anyone's retirement. It should make no difference that, before Mrs. Heffron's death, the money was for her retirement. What matters is how the money is being used now. No one would doubt that if an IRA owner takes money out of the IRA and gives it to the owner's children, who then deposit it in a normal savings account, the money does not constitute "retirement funds" exempt from creditors in bankruptcy. The money, although formerly "set apart" for retirement purposes, is no longer. Because Mrs. Heffron's former retirement funds are now held by her daughter *not* as retirement savings, but as funds available for current consumption, the same result obtains here.

Petitioners' contrary reading renders the requirement that the exempted funds be "retirement funds" superfluous. The statute limits the exemption's scope to "[1] retirement funds [2] to the extent that those funds are in a fund or account that is exempt from taxation under" one of enumerated sections of the Tax Code, each of which addresses retirement accounts. 11 U.S.C. §522(b)(3)(C), (d)(12). Under petitioners' theory, *any* money in one of the enumerated tax-exempt accounts would necessarily qualify as "retirement funds" because the funds were at some point set aside for someone's retirement. On that reading, however, the "retirement funds" limitation would do no work. Indeed, the debtors in *Chilton* candidly acknowledged that their reading rendered the phrase "retirement

funds" "surplusage." Appellees' Br. 10, No. 11-40377, *In re Chilton* (5th Cir. June 24, 2011). That interpretation countermands the "'cardinal rule that, if possible, effect shall be given to every clause and part of a statute.'" *RadLAX Gateway Hotel, LLC* v. *Amalgamated Bank*, 132 S. Ct. 2065, 2071 (2012); *see Corley* v. *United States*, 129 S. Ct. 1558, 1566 (2009).[6]

II. The Recent And Undeveloped Conflict In The Federal Courts Does Not Warrant Review

A. The Shallow One-One Split Between The Fifth And Seventh Circuits Is Likely To Resolve Itself Without This Court's Intervention

As petitioners observe, prior to the Seventh Circuit's decision below, a panel of the Fifth Circuit had reached the contrary conclusion, holding that inherited IRAs are exempt under Section 522. *Chilton*, 674 F.3d at 488-489. That shallow division of authority, however, does not warrant this Court's intervention. Other courts of appeals are likely to follow the Seventh Circuit's cogent analysis. Moreover, the Fifth Circuit has not yet had the opportunity to consider the issue en

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[6] 11 U.S.C. §522(b)(4)(C) does not help petitioners' case. That provision simply states that a trustee-to-trustee transfer of "retirement funds" does not deprive the funds of protection solely "by reason of such direct transfer." Such transfers are commonplace outside the inherited IRA context. For example, the owner of an IRA can make a direct trustee-to-trustee transfer of funds from one IRA to another without incurring tax liability. *See* Publication 590 at 22; 26 U.S.C. §401(a)(31). Section 522(b)(4)(C) means that such a transfer alone does not affect whether the funds are exempt. It has no relevance to this case, in which the funds at issue were no longer anyone's "retirement funds" at the time they were transferred from Ms. Heffron-Clark's deceased mother's IRA to Ms. Heffron-Clark's inherited IRA.

banc and is likely to correct its error when it does have that opportunity.

Last year, the Fifth Circuit became the first appellate court to address the question here—at the time, an issue "of first impression for [the Fifth Circuit] and [its] sister circuits." *Chilton*, 674 F.3d at 488. The panel held that inherited IRAs are exempt under Section 522, reaching that conclusion in three quick paragraphs. *See id.* at 488-489. Relying heavily on the authority of a bankruptcy appellate panel decision, *Nessa*, 426 B.R. at 312, the Fifth Circuit panel concluded that the phrase "'retirement funds' can include the funds that others had originally set aside for their retirements, as with inherited IRAs." *Id.* at 489. In the panel's view, the "plain meaning" of Section 522 dictates that funds in inherited IRAs, which by definition cannot be saved in that account for retirement, are nonetheless "retirement funds." *Id.*

The Fifth Circuit's cursory analysis likely will not fare well in other appellate courts, particularly read next to the Seventh Circuit's decision. The court's opinion is most notable for the key aspects of the issue it fails even to address. For example, the relevant part of the opinion does not contain a single citation to the federal statutory or regulatory provisions that define the differences between IRAs and inherited IRAs. The Fifth Circuit panel opinion does not mention, much less account for, the distinctions between a spousal inherited IRA and a non-spousal inherited IRA. Nor does the court acknowledge that its interpretation of "retirement funds" would render that phrase surplusage because it would require treating every dollar in any retirement vehicle listed in Section 522 as a "retirement fund," regardless of the permitted use of the money at the time of bankruptcy. Finally, the Fifth Circuit panel

does not even hazard a guess as to why Congress would have intended such an irrational windfall for debtors who happen to inherit non-spousal IRAs, allowing them to use a pot of money for present consumption, while simultaneously shielding it from creditors in bankruptcy.

Intervention by this Court now—to address a question decided by only two circuits, where one side of the split has simply failed to address important aspects of the question—would be premature. Given the significant gaps in the Fifth Circuit's analysis and with the benefit of the Seventh Circuit's opinion, there is every reason to expect that the courts of appeals will resolve this thin disagreement absent this Court's review. And, significantly, the trustee in *Chilton* did not seek en banc reconsideration, so the full Fifth Circuit has not yet had the chance to pass on the question. In the wake of the Seventh Circuit's decision, which not only disagrees with the Fifth Circuit panel's opinion but underscores the serious flaws in it, the Fifth Circuit may well take the issue en banc and correct its error. At the least, there is no reason for the Court not to give the courts of appeals the opportunity to settle this issue themselves.

Recognizing that this Court ordinarily would not intervene to referee a recent, one-one split, petitioners contend that "[t]here is ... considerable uncertainty about when, if ever, the Court would have another opportunity to resolve the question presented." Pet. 17. Petitioners' speculation is unsupported.[7] In *Rousey*, for

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[7] Petitioners posit (Pet. 16) that parties in bankruptcy proceedings "often lack the financial resources to pursue protracted litigation," but at least in this context that is difficult to square with the fact that the very split on which petitioners rely arose in the last two years, with successive appellate decisions. Furthermore, whatever theoretical disincentives may exist for appeals in a

example, this Court addressed whether "debtors can exempt assets in their [IRAs] from the bankruptcy estate pursuant to § 522(d)(10)(E)." 544 U.S. at 322. In doing so, the Court explained that it was addressing a "division among the Courts of Appeals" that arose when the Eighth Circuit broke with four of its sister circuits that had recently addressed the same question. *Id.* at 325. The fact that, prior to *Rousey*, five circuits had, in relatively quick succession, addressed a similar question to that presented here contradicts petitioners' suggestion that the issue is unlikely to recur. Similarly, in *Patterson* v. *Shumate*, 504 U.S. 753, 757 & n.1 (1992), this Court addressed the status of ERISA-qualified pensions in bankruptcy, thus "resolv[ing] [a] conflict among the Courts of Appeals" involving a four-four circuit split. Those examples demonstrate concretely that cases involving Chapter 7 exemptions and retirement vehicles have had little difficulty "percolat[ing] up to the courts of appeals" (Pet. 16) or coming to this Court based on mature divisions among the circuits. Petitioners' call for this Court to rush to resolve an undeveloped split based on speculation that another opportunity may never arise runs contrary to historical fact.[8]

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typical Chapter 7 case, the divide between the Fifth and Seventh Circuits, although shallow, will provide powerful incentives for parties to appeal those issues in other circuits.

[8] Indeed, even the decisions of this Court cited by petitioners elsewhere as examples of the Court's willingness to decide bankruptcy issues (*see* Pet. 15) further undermine petitioners' apparent position that this Court must either decide the issue now in the face of a one-one split or not at all. *See Bullock* v. *BankChampaign, N.A.*, 133 S. Ct. 1754, 1758 (2013) (noting "lower courts ha[d] long disagreed" on the issue, citing as examples cases from the First, Fourth, and Ninth Circuits); *Hall* v. *United States*, 132 S. Ct. 1882, 1886 & n.1 (2012) (noting a circuit split involving the Eighth, Ninth, and Tenth Circuits); *Ransom*, 131 S. Ct. at 723 &

B. The Seventh Circuit's Disagreement With Bankruptcy Court Decisions Does Not Warrant This Court's Review

Faced with a shallow one-one circuit split, petitioners understandably seek to deepen the conflict, arguing that, "[r]emarkably, the Seventh Circuit's decision conflicts ... with every other valid lower-court decision to have considered the issue." Pet. 11. Of course, disagreement between bankruptcy courts and an appellate court is hardly remarkable, and certainly would not justify this Court's review in the ordinary course. *See* Gressman *et al.*, *Supreme Court Practice* 503 (9th ed. 2007) (the Court "usually declines to review appellate decisions that conflict with federal district court decisions"). District courts and appellate courts sit to ensure correct and uniform resolution of bankruptcy issues. And there is no reason to doubt that this structure of review will resolve this issue appropriately.

The scattershot collection of published and unpublished bankruptcy court decisions cited by petitioners is not to the contrary. Without exception, those cases are based on a single erroneous decision of a bankruptcy appellate panel in 2010. In *Nessa*, 426 B.R. at 314, the court concluded, in a few paragraphs of analysis, that inherited IRAs are exempt because Section 522 "requires that the account be comprised of retirement funds, but it does not specify that they must be the *debtor's* retirement funds." The court concluded that, though the money was not set aside for the debtor's "retirement," the funds were "retirement funds" under Section 522. *Id.* at 314-315.

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n.4 (noting a three-one circuit split involving the Fifth, Seventh, Eighth, and Ninth Circuits).

It is doubtful that the *Nessa* analysis—which has been criticized by commentators[9]—will withstand future review by federal courts. *Nessa* is contrary to the text, purpose, and history of Section 522 and fails to consider the crucial distinctions in economic form and substance between IRAs and inherited IRAs. Before the Seventh Circuit's decision, bankruptcy courts reflexively followed the lead, and repeated the errors, of *Nessa*.[10] But, faced with the significant analytical shortcomings in *Nessa* and *Chilton* brought to light by the Seventh Circuit's decision, it is unlikely that federal district or appellate courts will further propagate an errant interpretation of Section 522. Of course, if ordi-

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[9] *See, e.g.*, Cymrot & Lassman, *Inherited IRAs: Exemption Issues under the Code*, 30 Am. Bankr. Inst. J. 1, 67 (2011) ("The court's view in *Nessa* is not persuasive. An inherited IRA is akin to a revocable gift or inheritance that the beneficiary may acquire upon the donor's death."); *see also* Shumway, *Is an Inherited IRA a Retirement Account and Therefore Exempt?*, NABTalk: J. of the Nat'l Ass'n of Bankr. Trs. 36, 37 (Spring 2012) ("Congress never intended an 'Inherited IRA' to be anything more than a structured settlement fund for an inheritance.").

[10] *See* Pet. App. 26a ("[m]ost subsequent cases rely on ... *Nessa*"); *In re Kuchta*, 434 B.R. 837, 843-844 (Bankr. N.D. Ohio 2010) (citing and "agree[ing] with the reasoning and result in *Nessa*"); *In re Weilhammer*, 2010 WL 3431465, at*4-5 (Bankr. S.D. Cal. Aug. 30, 2010) (similar); *Bierbach* v. *Tabor*, 2010 WL 8914472, at *1-2 (M.D. Pa. Dec. 2, 2010) (similar); *In re Mathusa*, 446 B.R. 601, 603-604 (Bankr. M.D. Fla. 2011) (similar); *In re Thiem*, 443 B.R. 832, 843-844 (Bankr. D. Ariz. 2011); *In re Johnson*, 452 B.R. 804, 807-808 (Bankr. W.D. Wash. 2011) (similar); *In re Cutignola*, 450 B.R. 445, 451-452 (Bankr. S.D.N.Y 2011) (similar); *In re Kalso*, 2011 WL 3678326, at *2 (Bankr. E.D. Mich. Aug. 19, 2011); *In re Hamlin*, 465 B.R. 863, 872-873 (B.A.P. 9th Cir. 2012) (similar); *In re Seeling*, 471 B.R. 320, 322-323 (Bankr. D. Mass. 2012) (following *Chilton* and *Nessa*); *In re Bauer*, 2013 WL 2661835, at *1-2 (Bankr. D.S.C. June 13, 2013) (similar); *In re Trawick*, 2013 WL 4574533, at *14-15 (Bankr. C.D. Cal. Aug. 29, 2013) (similar).

nary appellate channels prove insufficient to settle this issue correctly, certiorari might be appropriate later. But there is no cause for this Court to intervene now on the assumption that those ordinary channels of review will fail at their task.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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REPLY BRIEF

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No. 13-299

In the Supreme Court of the United States

BRANDON C. CLARK AND HEIDI K. HEFFRON-CLARK,
PETITIONERS

v.

WILLIAM J. RAMEKER, TRUSTEE, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

REPLY BRIEF FOR THE PETITIONERS

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REPLY BRIEF FOR THE PETITIONERS

This is the exceptionally rare case at the certiorari stage where respondents do not dispute any of the three propositions most relevant to the determination of whether to grant review. First, respondents do not dispute—and indeed concede—that a circuit conflict exists on the question of whether an inherited IRA qualifies for the "retirement funds" exemption in Section 522 of the Bankruptcy Code. Second, respondents do not dispute that the question presented is of substantial importance to litigants and to the administration of the Bankruptcy Code. Third, respondents do not dispute that this case is an ideal vehicle in which to consider and resolve the question presented.

In a halfhearted effort to shield their victory before the court of appeals, respondents argue only that the circuit conflict on the question presented—a conflict that

the court of appeals deliberately created—is a shallow one that does not yet warrant the Court's review. There are compelling reasons, however, why the Court should answer the question presented in this case, rather than allowing the disagreement in the lower courts to fester and waiting for another case that may never come. Because this case plainly satisfies the familiar criteria for further review, the petition for certiorari should be granted.

1. Respondents contend that this Court "ordinarily would not intervene" to resolve a one-to-one circuit conflict. Br. in Opp. 18. To the contrary, especially in recent years, the Court has routinely granted review to resolve conflicts between two courts of appeals on questions of statutory or regulatory interpretation. See, *e.g.*, *PPL Corp.* v. *Commissioner*, 133 S. Ct. 1897, 1901 (2013); *Salazar* v. *Ramah Navajo Chapter*, 132 S. Ct. 2181, 2188 & n.2 (2012); *Christopher* v. *SmithKline Beecham Corp.*, 132 S. Ct. 2156, 2165 (2012); *Hall* v. *United States*, 132 S. Ct. 1882, 1886 & n.1 (2012); *Chase Bank USA, N.A.* v. *McCoy*, 131 S. Ct. 871, 877 (2011).[1]

Whatever the Court's practice in other contexts, moreover, the Court has long granted review to resolve shallow circuit conflicts in the bankruptcy context, rec-

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[1] Moreover, as noted in the petition (at 11-12), the two bankruptcy appellate panels to have considered the question presented have reached the same conclusion as the Fifth Circuit. See *In re Hamlin*, 465 B.R. 863, 871-873 (B.A.P. 9th Cir. 2012); *In re Nessa*, 426 B.R. 312, 314-315 (B.A.P. 8th Cir. 2010). Notably, in describing circuit conflicts on issues of bankruptcy law, this Court has frequently included decisions of bankruptcy appellate panels. See, *e.g.*, *Schwab* v. *Reilly*, 130 S. Ct. 2652, 2659 & n.4 (2010); *Grogan* v. *Garner*, 498 U.S. 279, 283 & n.7 (1991). If the decisions in *Hamlin* and *Nessa* were counted here, it would turn respondents' claimed one-to-one conflict into a three-to-one conflict in petitioners' favor.

ognizing the paramount importance of uniformity in the interpretation of the Bankruptcy Code. See U.S. Const. Art. I, § 8, cl. 4. Not only do respondents ignore that need for uniformity, but they overlook (and mischaracterize) a recent example of the Court's granting review in an almost identical posture. In *Hall*, the decision below, like the decision here, created a conflict with one other court of appeals and with numerous district and bankruptcy courts on the interpretation of a provision of the Bankruptcy Code. See Pet. at 7-10, *Hall*, *supra* (No. 10-874). Unlike respondents here, however, the respondent in *Hall* agreed that, while there was only a one-to-one circuit conflict, immediate review was warranted because of "the importance of uniform administration of federal tax and bankruptcy laws." See U.S. Cert. Br. at 7, 14, *Hall*, *supra*.

As noted above, in *Hall*, the Court granted certiorari. See 131 S. Ct. 2989 (2011). Contrary to respondents' misleading suggestion (Br. in Opp. 19 n.8), moreover, a third court of appeals did not address the question presented until *after* the Court granted review. See *In re Dawes*, 652 F.3d 1236 (10th Cir. 2011). Here, just as in *Hall*, the conflict on a question of bankruptcy law between the decision below, on the one hand, and the decisions of another court of appeals and every other court to have validly decided the question, on the other, merits this Court's immediate review and resolution.

In addition, as explained in the petition (at 16-17), the Court's intervention is warranted in this case because the circuit conflict on the question presented is unlikely to deepen anytime soon. On that point, respondents offer only the weak response that, in some cases in which this Court granted review to resolve *other* questions of bankruptcy law, the circuit conflicts were deeper. See Br. in Opp. 18-19. The best evidence that the circuit con-

flict on the question presented *here* is unlikely to deepen, however, is the actual evidence of litigation to date on the question.

In the near decade since the "retirement funds" exemption was enacted, only two of the numerous cases in which the question presented has been decided have percolated up to a court of appeals; in fact, the vast majority of those cases never even made it out of bankruptcy court. See Pet. 11-12 & n.5. What is more, respondents have not identified any court of appeals where the question is currently pending, and we are aware of none.[2] Given the reality that parties in cases presenting the question will often lack the financial resources to pursue protracted litigation, it is unsurprising that such cases have only rarely made it even to the court of appeals level. There is therefore good reason to doubt that this Court will have another opportunity anytime soon, if ever, to resolve the question presented if it were to deny review in this case.

2. Unable to dispute the existence of a circuit conflict, respondents resort to the speculative argument that the conflict may eventually "heal itself." Br. in Opp. 3. But it is highly unlikely that the conflict will be eliminated, for reasons that serve only to confirm why this case warrants the Court's review.

To begin with, the Fifth Circuit is unlikely to overrule its decision in *In re Chilton*, 674 F.3d 486 (2012), even if it were to have an opportunity to do so. Putting aside respondents' snide characterization of its analysis as "cursory" (Br. in Opp. 2, 17), the Fifth Circuit in fact

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[2] In *Hall*, by contrast, petitioners noted that the same issue was then pending in the Tenth Circuit, yet the Court granted review on the existing one-to-one circuit conflict without awaiting further percolation. See Pet. at 10, *Hall*, *supra*.

considered, and rejected, the same arguments that the Seventh Circuit advanced in the opinion below. The trustee in *Chilton*, like the Seventh Circuit, emphasized the differences between IRAs in the hands of their original owners and inherited IRAs, and contended that the essence of the funds in an IRA changes upon the original owner's death because the funds in an inherited IRA are no longer held for retirement but are available for current consumption. Compare Br. of Appellant at 14-18, *Chilton*, *supra* (No. 11-40377), with Pet. App. 2a-7a. Those arguments had also been accepted by the bankruptcy court in *Chilton*, which held that an inherited IRA does not qualify for the "retirement funds" exemption in Section 522. See *In re Chilton*, 426 B.R. 612, 616-618 (Bankr. E.D. Tex. 2010), rev'd, 444 B.R. 548 (E.D. Tex. 2011). The Fifth Circuit, however, squarely rejected those arguments in favor of the "plain meaning" of the statute. See *Chilton*, 674 F.3d at 488-489.

More broadly, even assuming that the Fifth Circuit were to have an opportunity to revisit the question and were to grant en banc review and overrule *Chilton*, the problem of uncertain and disuniform application of the "retirement funds" exemption would persist. Courts across the country—including the bankruptcy appellate panels of two circuits and district and bankruptcy courts in almost every other circuit—would still be applying a different standard. See Pet. 11-12 & n.5. As is the case today, debtors in the Missouri suburbs of St. Louis would likely be able to retain their inherited IRAs post-bankruptcy, while debtors across the river in the Illinois suburbs would not. Resolving the disuniformity in the federal courts on this important question is therefore not simply a matter of waiting for one court to change its mind; courts nationwide would have to reverse course.

And there is little reason to believe that they will. Contrary to respondents' hopeful predictions (Br. in Opp. 16, 21), the Seventh Circuit's decision in this case has yet to convince a single court to follow suit. In fact, the two courts to have considered the issue since the Seventh Circuit's decision have specifically *rejected* its reasoning. One court concluded that the Fifth Circuit's reasoning was "more persuasive," *In re Bauer*, No. 13-1562, 2013 WL 2661835, at *2 (Bankr. D.S.C. June 12, 2013), and the other criticized the Seventh Circuit on the ground that its interpretation "is not based on the plain language of the statute, but appears to be based on the court's own policy considerations," *In re Trawick*, 497 B.R. 572, 586-588 (Bankr. C.D. Cal. 2013).[3] Those decisions amply confirm that the Seventh Circuit's "cogent analysis" (Br. in Opp. 16) has not proven the game-changer that respondents make it out to be. Given the disuniformity created by the Seventh Circuit's decision and the rarity with which the question presented reaches the court of appeals level, this Court's intervention is warranted, and it is warranted now.

3. Finally, perhaps recognizing that this case is a compelling candidate for the Court's review, respondents jump the gun with an extended discussion of the merits. See Br. in Opp. 10-16. For present purposes, it should suffice to note that the sharply contrasting views of the parties (and of lower courts) concerning the interpretation of the "retirement funds" exemption in Section 522

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[3] Oddly, respondents cite those two decisions for the proposition that, "[b]efore the Seventh Circuit's decision, bankruptcy courts reflexively followed the lead, and repeated the errors, of *Nessa*." Br. in Opp. 21 & n.10. As noted above, those two decisions were issued *after* the Seventh Circuit's decision, and they expressly rejected the Seventh Circuit's approach in favor of the majority approach.

underscore the need for this Court's review. But respondents' contention that the majority interpretation is not just incorrect but "irrational," see Br. in Opp. 13, demands a brief response here.

At the risk of stating the obvious, an inherited individual retirement account remains a "retirement account," and it retains the hallmark feature of an IRA: namely, that funds contained in the account are exempt from taxation, with funds being taxed, if at all, only upon distribution. See 26 U.S.C. 408(e)(1); 26 U.S.C. 408A(a). As such, funds in an inherited IRA satisfy the statutory requirement that they be "in a fund or account that is exempt from taxation under" one of the listed provisions of the Internal Revenue Code. 11 U.S.C. 522(b)(3)(C) and (d)(12). Every inherited IRA, moreover, was initially created for a retirement purpose, and the funds in the account were set apart for retirement by being placed in a retirement account. By any definition, that is sufficient to render the funds in an inherited IRA "retirement funds." *Chilton*, 674 F.3d at 489 (quoting *Webster's Third New International Dictionary* 921, 1939 (1993)).

Respondents suggest that "[w]hat matters is how the money is being used now." Br. in Opp. 15; see *id.* at 10-11. The text of Section 522, however, does not mandate a further inquiry into how the funds are used after they are initially set apart for retirement in a retirement account. And such a purposive inquiry would create a host of problematic scenarios. While the original owner of an IRA initially places funds in a retirement account in the expectation that they will be used for retirement, the owner may subsequently use the funds therein for any purpose, subject only to a penalty in most instances if he withdraws funds before age 59½. See IRS, Publication 590: Individual Retirement Arrangements (IRAs) 55, 70-71 (2013). Conversely, after the original owner dies, the

beneficiary of the inherited IRA may use the funds therein for retirement, subject only to minimum distributions that the beneficiary is required to withdraw annually based on his life expectancy. See David J. Cartano, *Taxation of Individual Retirement Accounts* § 32.02[A][1], at 857 (2013).

Two examples prove the point. Suppose a 60-year-old individual who remains employed falls on hard times and begins withdrawing funds from his IRA to pay down his debts. Under respondents' interpretation, assuming the individual intended to deplete his IRA further in that fashion, the remaining funds in the IRA would apparently cease to be "retirement funds," because they are not being "used after [he] has ceased employment" or "saved for anyone's retirement." Br. in Opp. 11, 15. Conversely, suppose an individual such as Mrs. Heffron-Clark intended to use for her own retirement the funds remaining in an inherited IRA after any minimum distributions. Those funds would seemingly qualify as "retirement funds" even under respondents' interpretation, because they are "resources to be used after one has ceased employment." *Id.* at 11. It is hard to see why Congress would have wanted the determination of what constitutes "retirement funds" for purposes of Section 522 to turn on such a fact-intensive, case-by-case inquiry. There is therefore nothing "irrational" about a simple, categorical approach under which an inherited IRA qualifies for the "retirement funds" exemption in Section 522.

As every court other than the Seventh Circuit to have validly decided the question presented has held, an interpretation of the "retirement funds" exemption based on the plain language of the provision is much sounder than the purposive, atextual interpretation advanced by respondents. And it accords with Congress's intention, in enacting the "retirement funds" exemption, to "ex-

pand the protection for tax-favored retirement plans or arrangements that may not be already protected under * * * state or Federal law." H.R. Rep. No. 31, 109th Cong., 1st Sess., Pt. I, at 63-64 (2005). In the wake of the Seventh Circuit's decision, there is a clear circuit conflict on the question of whether inherited IRAs are exempt from bankruptcy estates. This Court should grant review to resolve the circuit conflict and restore uniformity on that important question of bankruptcy law.

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The petition for a writ of certiorari should be granted.

Respectfully submitted.

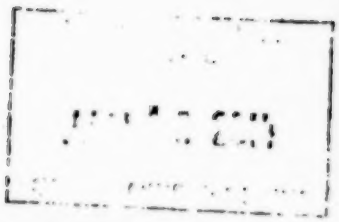
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NOVEMBER 2013

JOINT APPENDIX

RECORD
AND
BRIEFS



No. 13-299

In the Supreme Court of the United States

BRANDON C. CLARK AND HEIDI K. HEFFRON-CLARK,
PETITIONERS

v.

WILLIAM J. RAMEKER, TRUSTEE, ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

JOINT APPENDIX

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PETITION FOR A WRIT OF CERTIORARI FILED: SEPTEMBER 6, 2013
CERTIORARI GRANTED: NOVEMBER 26, 2013

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The following opinions, decisions, judgments, and orders have been omitted in printing the joint appendix because they appear as appendices to the petition for certiorari as follows:

Appendix A: Court of appeals opinion, Apr. 23, 2013

Appendix B: Court of appeals order, May 21, 2013

Appendix C: District court opinion, Jan. 5, 2012

Appendix D: Bankruptcy court opinion, May 10, 2011

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 12-1241

In re: BRANDON C. CLARK and HEIDI K. HEFFRON CLARK, Debtors-Appellees

APPEAL OF: WILLIAM J. RAMEKER, Trustee

DOCKET ENTRIES

DATE	DKT NO.	PROCEEDINGS
01/31/2012	1	Bankruptcy from District Court case docketed. (Originating Bankruptcy Judge Robert D. Martin) Fee paid. Docketing statement filed. Transcript information sheet due by 02/14/2012. Appellant's brief due on or before 03/12/2012 for William J. Rameker. [1] [6370780] [12-1241] (AD)
		* * * * *
02/07/2012	5	ORDER: The court orders these appeals CONSOLIDATED for purposes of briefing and disposition: 1. The appellants shall file their respective briefs and re-

quired short appendices on or before March 13, 2012. 2. The appellees shall file their consolidated brief on or before April 12, 2012. 3. The appellants shall file their respective reply briefs, if any, on or before April 26, 2012.Counsel for appellants are encouraged to avoid unnecessary duplication by filing a joint brief or a joint appendix or by adopting parts of a co-appellant's brief. Duplicative briefing will be stricken and may result in disciplinary sanctions against counsel. See United States v. Torres, 170 F.3d 749 (7th Cir. 1999); United States v. Ashman, 964 F.2d 596 (7th Cir. 1992). Appellants, however, may not adopt the "Jurisdictional Statement" of another. Each appellant's brief must include a complete "Jurisdictional Statement". Appellees' brief must comply with Circuit Rule 28(b). [5] DW [6372489] [12-1241, 12-1255] (FP)

* * * * *

03/27/2012	16	Appellant's brief filed by Appellant William J. Rameker

		in 12-1241, Appellants Gzinije Adili, Resul Adili and Not Party William J. Rameker in 12-1255. Paper copies due on 04/04/2012 Electronically Transmitted. [6385249][16] [12-1241, 12-1255] (SP)
03/27/2012	17	Filed Appendix by Appellant William J. Rameker in 12-1241, Appellants Gzinije Adili, Resul Adili and Not Party William J. Rameker in 12-1255. [17] [6385250] Paper copies due on 04/04/2012 [12-1241, 12-1255] (SP)
		* * * * *
03/28/2012	19	Amicus brief filed by Amicus Curiae National Association of Bankruptcy Trustees in 12-1241, 12-1255 by consent. Paper copies due on 04/05/2012 Electronically Transmitted. [6385595] [12-1241, 12-1255] (SP)
		* * * * *
05/04/2012	28	Amicus brief filed by Amicus Curiae National Association of Consumer Bankruptcy Attorneys in 12-1241, 12-1255 by consent. Paper copies due on 05/14/2012 Electronically Transmitted. [6395759] [12-

1241, 12-1255] (RS)

* * * * *

05/11/2012	32	CORRECTED Appellee's brief filed by Appellees Brandon C. Clark and Heidi K. Heffron-Clark in 12-1241, 12-1255. Paper copies due on 05/18/2012 Electronically Transmitted. [6397079][32] [12-1241, 12-1255] (SK)
05/11/2012	33	Appellant's reply brief filed by Appellant William J. Rameker in 12-1241, Appellants Gzinije Adili, Resul Adili and Not Party William J. Rameker in 12-1255. Paper copies due on 05/18/2012 Electronically Transmitted. [6397188][33] [12-1241, 12-1255] (SP)

* * * * *

05/31/2012	36	Filed Appellees Brandon C. Clark and Heidi K. Heffron-Clark in 12-1241 Citation of Additional Authority, per Circuit Rule 28(e). [36] [6402059] [12-1241, 12-1255] (Bartell, Denis)

* * * * *

08/01/2012	39	Original record on appeal filed electronically. Contents

		of record : 1 vol. of pleadings. [39] [6417033] [12-1241, 12-1255] (RT)
		* * * * *
09/06/2012	44	Case heard and taken under advisement by panel: Frank H. Easterbrook, Chief Judge; Joel M. Flaum, Circuit Judge and Ann Claire Williams, Circuit Judge. [44] [6425738] [12-1241, 12-1255] (RT)
		* * * * *
04/23/2013	46	Filed opinion of the court by Chief Judge Easterbrook. REVERSED. Because our conclusion creates a conflict among the circuits, we circulated the opinion before release to all judges in active service. None of the judges requested a hearing en banc. Frank H. Easterbrook, Chief Judge; Joel M. Flaum, Circuit Judge and Ann Claire Williams, Circuit Judge. [46] [6480739] [12-1241, 12-1255] (AD)
04/23/2013	47	ORDER: Final judgment filed per opinion. With costs: yes. [47] [6480743] [12-1241, 12-1255] (AD)

* * * * *

05/06/2013	53	Filed Petition for Rehearing and Petition for Rehearing Enbanc by Appellees Brandon C. Clark and Heidi K. Heffron-Clark in 12-1241, 12-1255. Paper copies due on 05/09/2013 [53] [6484485] [12-1241, 12-1255] (SP)
05/21/2013	54	ORDER: Appellees Brandon C. Clark and Heidi K. Heffron-Clark in 12-1241, 12-1255 Petition for Rehearing and Petition for Rehearing Enbanc is DENIED. [54] [6487659] [12-1241, 12-1255] (ER)

* * * * *

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN

No. 3:11-CV-00482-bbc

BRANDON C. CLARK and HEIDI K. HEFFRON-CLARK, Appellants

v.

WILLIAM J. RAMEKER, Trustee, and RESUL and ZINIJE ADILI, d/b/a KEGONSA PLAZA, Appellees

---

DOCKET ENTRIES

DATE	DKT NO.	PROCEEDINGS
07/11/2011	1	Notice of Appeal from Bankruptcy Court, Bankruptcy Court Case Number 10-18035, filed by Brandon C. Clark, Heidi K. Heffron-Clark. Documents from the Bankruptcy case can be found here. Brief in Support due 7/25/2011. Brief in Opposition due 8/8/2011. Brief in Reply due 8/22/2011. (Attachments: # 1 Appeal Information Sheet, # 2 Transmittal of Record on Appeal, # 3 Bankruptcy Court Docket Sheet) (arw) (Entered: 07/11/2011)

07/22/2011	2	Appellant's Brief re: 1 Notice of Appeal from Bankruptcy Court. (Bartell, Denis) Modified on 7/25/2011 (llj). (Entered: 07/22/2011)
08/08/2011	3	Appellee's BRIEF re: 1 Notice of Appeal from Bankruptcy Court. Bankruptcy Court case number 10-18035. Documents from the Bankruptcy case can be found here. by Appellees Gzinije Adili, Resul Adili, William J. Rameker. (Attachments: # 1 Appendix) (West, Erin) (Entered: 08/08/2011)
08/22/2011	4	Appellant's REPLY BRIEF by Appellants Brandon C. Clark, Heidi K. Heffron-Clark. (Murphy, Sean) (Entered: 08/22/2011)
		* * * * *
12/22/2011	6	Notice by Appellants Brandon C. Clark, Heidi K. Heffron-Clark. (Attachments: # 1 Additional Authority) (Bartell, Denis) (Entered: 12/22/2011)
01/04/2012	7	Notice by Appellants Brandon C. Clark, Heidi K. Heffron-Clark *Notification of Additional Authority*. (At-

		tachments: # 1 In re Stephenson, 11CV10848 WL 6152960) (Murphy, Sean) (Entered: 01/04/2012)
01/05/2012	8	ORDER reversing and remanding action to Bankruptcy Court for further proceedings RE: 1 Bankruptcy Appeal. Signed by District Judge Barbara B. Crabb on 1/5/2012. (voc) (Entered: 01/05/2012)
		* * * * *
01/31/2012	11	Notice of Appeal re: 8 Order by William Rameker. Fee paid, receipt #0758-924215, Docketing statement filed. (Stephen Morgan), Modified on 1/31/12 by mmo. Modified on 4/9/2012; Appeal #12-1241 (mmo). (Entered: 01/31/2012)
		* * * * *
02/02/2012	15	NOTICE OF APPEAL by Appellees Gzinije Adili, Resul Adili as to 8 Order deciding Bankruptcy Appeal. Filing fee of $ 455, receipt number 0758-926736 paid. Docketing Statement filed. (Attachments: # 1 Docketing Statement) (Sage, Roger) Modified on 4/9/2012; Appeal #12-1255

(mmo). (Entered: 02/02/2012)

* * * * *

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

No. 10-18035

In re: BRANDON C. CLARK and
HEIDI K. HEFFRON-CLARK, Debtors.

DOCKET ENTRIES

DATE	DKT NO.	PROCEEDING
10/29/2010	1	Chapter 7 Voluntary Petition Fee Amount $ 299 filed by Brandon C. Clark, Heidi K Heffron-Clark. All Schedules and Statements filed. (Attachments: 1 Second Half of Schedules and Statements) (Bartell, Denis) (Entered: 10/29/2010)
		* * * * *
12/28/2010	26	Objection to Debtor's Claim of Exemptions filed by Erin A. West on behalf of William J. Rameker. Related document(s)1 Voluntary Petition (Chapter 7) filed by Debtor Brandon C. Clark, Joint Debtor Heidi K Heffron-

Clark. (West, Erin) (Entered: 12/28/2010)

* * * * *

01/04/2011	32	Objection *to Exemption Claim* filed by Roger Sage on behalf of Resul and Zinije Adili. Related document(s)1 Voluntary Petition (Chapter 7) filed by Debtor Brandon C. Clark, Joint Debtor Heidi K Heffron-Clark.(Sage, Roger) Modified on 1/25/2011 re linkage to 26 (Madison, Jolene). (Entered: 01/04/2011)

* * * * *

01/12/2011	34	Amended Schedules/Statements: B, C, [change to exemption and account number] [No Fee Due] filed by Denis P. Bartell on behalf of Brandon C. Clark, Heidi K Heffron-Clark. (Bartell, Denis) Modified on 1/25/2011 re linkage to 1 (Madison, Jolene). (Entered: 01/12/2011)

* * * * *

01/24/2011	38	Objection to Debtor's Claim of Exemptions *(debtors' amended exemptions)* filed by Erin A. West on behalf of William J. Rameker. Related document(s) 34 Amended Schedules/Statements filed by Debtor Brandon C. Clark, Joint Debtor Heidi K Heffron-Clark. (West, Erin) Modified on 1/25/2011 re linkage (Madison, Jolene). (Entered: 01/24/2011)

* * * * *

02/01/2011	40	Objection *to Amended Schedules B and C Exemption Claim of the debtors* filed by Roger Sage on behalf of Resul and Zinije Adili. Related document(s)34 Amended Schedules/Statements filed by Debtor Brandon C. Clark, Joint Debtor Heidi K Heffron-Clark.(Sage, Roger) (Entered: 02/01/2011)

* * * * *

02/01/2011	42	Amended Objection *to Amended Schedules B and C Exemption Claim of the debtors correcting reference to 11*

		U.S.C. Sec. 522(b)(3)(C) filed by Roger Sage on behalf of Resul and Zinije Adili. Related document(s)34, 40 Amended Schedules/Statements filed by Debtor Brandon C. Clark, Joint Debtor Heidi K Heffron-Clark, Objection filed by Creditor Resul and Zinije Adili.(Sage, Roger) (Entered: 02/01/2011)
02/04/2011	43	Response *Debtors' Brief In Support of Exemption and Response to Trustee's Objection* filed by Sean M Murphy on behalf of Brandon C. Clark, Heidi K Heffron-Clark. Related document(s)38 Objection to Debtor's Claim of Exemptions filed by Trustee William J. Rameker.(Murphy, Sean) (Entered: 02/04/2011)
		* * * * *
02/07/2011	45	PM/Hearing held on *2/7/2011 at 02:00 PM at Madison Hearings, Courtroom 350 on Trustee's Objection to Debtor's Claim of Exemptions. OUTCOME: Matter Taken Under Advisement. Agreed facts by March 1; Debtor's*

brief by 3/15; Objector's brief by 4/1; decide ASAP thereafter. (Related Doc # 38). (Madison, Kathleen) (Entered: 02/11/2011)

* * * * *

03/01/2011	48	Agreed Statement of the Case - *Statement of Facts* filed by Erin A. West on behalf of Resul and Zinije Adili, Brandon C. Clark, Heidi K Heffron-Clark, William J. Rameker. Related document(s)45 No action taken on Proceeding Memo/Hearing Held. (West, Erin) (Entered: 03/01/2011)
03/14/2011	49	Brief/Memorandum *Debtors' Supplemental Brief In Support of Exemption and Response to Trustee Objection* filed by Sean M Murphy on behalf of Brandon C. Clark, Heidi K Heffron-Clark. Related document(s)38 Objection to Debtor's Claim of Exemptions filed by Trustee William J. Rameker. (Murphy, Sean) (Entered: 03/14/2011)

04/01/2011	50	Letter *to Judge Martin encl. updated legal precedent* filed by Sean M Murphy on behalf of Brandon C. Clark, Heidi K Heffron-Clark. Related document(s) 49 Brief/Memorandum filed by Debtor Brandon C. Clark, Joint Debtor Heidi K Heffron-Clark. (Murphy, Sean) (Entered: 04/01/2011)
04/01/2011	51	Brief/Memorandum *in support of objections to amended exemption* filed by Erin A. West, Roger Sage on behalf of Resul and Zinije Adili, William J. Rameker. Related document(s)38, 42 Objection to Debtor's Claim of Exemptions filed by Trustee William J. Rameker, Corrective Entry filed by Creditor Resul and Zinije Adili. (Sage, Roger)(corrected link #41 to #42) Modified on 4/4/2011 (Madison, Cathy). (Entered: 04/01/2011)
05/10/2011	52	Memorandum Decision and Order SUSTAINING trustee and judgment creditors' objections to the debtors' claimed exemption of their

		inherited IRA and DISALLOWING the debtors' exemption of their inherited IRA. (Related Doc # 28, 38) Signed on 5/10/2011. (Madison, Penny) Modified on 5/10/2011 (Madison, Penny). (Entered: 05/10/2011)
		* * * * *
05/13/2011	55	Errata Order to Memorandum Decision dated May 10, 2011 cc: parties in int. (Related Doc # 52) Signed on 5/13/2011. (Madison, Penny) (Entered: 05/13/2011)
		* * * * *
05/18/2011	58	Notice of Appeal Fee Amount $ 255 filed by Denis P. Bartell on behalf of Brandon C. Clark, Heidi K Heffron-Clark (Related Doc # 52). Appellant Designation due by 06/1/2011. (Attachments: 1 Proof of Service)(Bartell, Denis) (Entered: 05/18/2011)
		* * * * *
06/13/2011	66	Order Granting Stipulation between Brandon C. Clark,

Heidi K Heffron-Clark and Trustee and Resul and Zinije Adili For Stay of Order Pending Appeal (Related Doc # 62) cc: parties in int. Signed on 6/13/2011. (Madison, Tina) (Entered: 06/15/2011)

* * * * *

B1 (Official Form 1) (4/10)

United States Bankruptcy Court Western District of Wisconsin		Voluntary Petition
Name of Debtor (if individual, enter Last, First, Middle): Clark, Brandon C.	Name of Joint Debtor (Spouse) (Last, First, Middle): Heffron-Clark, Heidi, K.	
All Other Names used by the Debtor in the last 8 years (include married, maiden, and trade names:	All Other Names used by the Joint Debtor in the last 8 years (include married, maiden, and trade names: Heidi K. Heffron	
Last four digits of Soc. Sec. or Individual-Taxpayer I.D. (ITIN/Complete EIN (if more than one, state all): 1434	Last four digits of Soc. Sec. or Individual-Taxpayer I.D. (ITIN/Complete EIN (if more than one, state all): 3379	
Street Address of Debtor (No. & Street, City, and State): 1385 Kaase Road Stoughton, WI ZIP CODE 53589	Street Address of Joint Debtor (No. & Street, City, and State): 1385 Kaase Road Stoughton, WI ZIP CODE 53589	
County of Residence or of the Principal Place of Business: Dane	County of Residence or of the Principal Place of Business: Dane	
Mailing Address of Debtor (if different from street address): ZIP CODE	Mailing Address of Debtor (if different from street address): ZIP CODE	
Location of Principal Assets of Business Debtor (if different from street address: ZIP CODE		
Type of Debtor (Form of Organization) (Check one box) ☑ Individual (includes Joint Debtors)	Nature of Business (Check one box) ❑ Health Care Business ❑ Single Asset Real Estate as defined in 11	Chapter of Bankruptcy Code Under Which the Petition is Filed (Check one box) ☑ Chapter 7 ❑ Chapter 9 ❑ Chapter 11

See Exhibit D on page 2 of this form. ❑ Corporation (includes LLC and LLP) ❑ Partnership ❑ Other (If debtor is not one of the above entities check this box and state type below.)	U.S.C. § 101(51B) ❑ Railroad ❑ Stockbroker ❑ Commodity Broker ❑ Clearing Bank ❑ Other Tax-Exempt Entity (Check box, if applicable) ❑ Debtor is a tax-exempt organization under Title 26 of the United States Code (the Internal Revenue Code)	❑ Chapter 12 ❑ Chapter 13 ❑ Chapter 15 Petition for Recognition of a Foreign Main Proceeding ❑ Chapter 15 Petition for Recognition of a Foreign Nonmain Proceeding Nature of Debts (Check one box) ☑ Debts are primarily consumer debts, defined in 11 U.S.C. § 101(8) as "incurred by an individual primarily for a personal, family, or household purpose." ❑ Debts are primarily business debts

Filing Fee (Check one box)	Chapter 11 Debtors
☑ Full Filing Fee attached ❑ Filing Fee to be paid in installments (applicable to individuals only). Must attach signed application for the court's consideration certifying that the debtor is unable to pay the fee except in installments. Rule 1006(b) See Official Form 3A. ❑ Filing Fee waiver requested (applicable to chapter 7 individuals only). Must attach signed application for the court's consideration. See Official Form 3B	Check one box: ❑ Debtor is a small business debtor as defined in 11 U.S.C. § 101(51D) ❑ Debtor is not a small business debtor as defined in 11 U.S.C. § 101(51D) Check if: ❑ Debtor's aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than $2,343,300 *(amount subject to adjustment on 4/01/13 and every three years thereafter)* Check all applicable boxes ❑ A plan is being filed with this petition ❑ Acceptances of the plan were solicited prepetition from one or more classes of creditors, in accordance with 11 U.S.C. § 1126(b)

Statistical/Administrative Information	THIS SPACE FOR COURT USE ONLY
❑ Debtor estimates that funds will be available for distribution to unsecured creditors. ☑ Debtor estimates that, after any exempt property is excluded and administrative expenses paid, there will be no funds available for distribution to unsecured creditors.	

Estimated Number of Creditors

☑	❑	❑	❑	❑	❑	❑
1-49	50-99	100-199	200-999	1,000-5,000	5,001-10,000	10,001-25,000
❑	❑	❑				
25,001-50,000	50,001-100,000	Over 100,000				

Estimated Assets ❑ $0 to $50,000 ❑ $50,001 to $100,000 ❑ $100,001 to $500,000 ☑ $500,001 to $1 million ❑ $1,000,001 to $10 million ❑ $10,000,001 to $50 million ❑ $50,000,001 to $100 million ❑ $100,000,001 to $500 million ❑ $500,000,001 to $1 ❑ More than $1 billion	
Estimated Liabilities ❑ $0 to $50,000 ❑ $50,001 to $100,000 ❑ $100,001 to $500,000 ☑ $500,001 to $1 million ❑ $1,000,001 to $10 million ❑ $10,000,001 to $50 million ❑ $50,000,001 to $100 million ❑ $100,000,001 to $500 million ❑ $500,000,001 to $1 ❑ More than $1 billion	

B1 (Official Form 1) (4/10) FORM B1, Page 2

Voluntary Petition *(This page must be completed and filed in every case)*	Name of Debtor(s) Brandon C. Clark, Heidi K. Heffron-Clark	
All Prior Bankruptcy Cases Filed Within Last 8 Years (if more than two, attach additional sheet).		
Location Where Filed: NONE	Case Number:	Date Filed
Location Where Filed:	Case Number:	Date Filed
Pending Bankruptcy Case Filed by any Spouse, Partner or Affiliate of this Debtor (if more than one, attach additional sheet)		
Name of Debtor: NONE	Case Number:	Date Filed:
District:	Relationship:	Judge:

Exhibit A

(To be completed if debtor is required to file periodic reports (e.g. forms 10K and 10Q) with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 and is requesting relief under chapter 11.)

☐ Exhibit A is attached and made a part of this petition.

Exhibit B

(To be completed if debtor is an individual whose debts are primarily consumer debts)

I, the attorney for the petitioner named in the foregoing petition, declare that I have informed the petitioner that [he or she] may proceed under chapter 7, 11, 12, of 13 of title 11, United States Code, and have explained the relief available under each such chapter. I further certify that I have delivered to the debtor the notice required by 11 U.S.C. § 342(b).

X s/ Denis P. Bartell

Signature of Attorney for Debtor(s) Date

Denis P. Bartell 1014532

Exhibit C

Does the debtor own or have possession of any property that poses or is alleged to pose a threat of imminent and identifiable harm to public health or safety?

❑ Yes, and Exhibit C is attached and made a part of this petition.

☑ No

Exhibit D

(To be completed by every individual debtor. If a joint petition is filed, each spouse must complete and attach a separate Exhibit D.)

☑ Exhibit D completed and signed by the debtor is attached and made a part of this petition.

If this is a joint petition:

☑ Exhibit D also completed and signed by the joint debtor is attached and made a part of this petition

Information Regarding the Debtor – Venue

(Check any applicable box)

☑ Debtor has been domiciled or has had a residence, principal place of business, or principal assets in this District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District.

❑ There is a bankruptcy case concerning debtor's affiliate, general partner, or partnership pending in this District.

❑ Debtor is a debtor in a foreign proceeding and has its principal place of business or principal assets in the United States in this District, or has no principal place of business or assets in the United States but is a defendant in an action or proceeding [in a federal or state court] in this District, or the interests of the parties will be served in regard to the relief sought in this District.

Certification by a Debtor Who Resides as a Tenant of Residential Property

(Check all applicable boxes.)

❑ Landlord has a judgment against the debtor for possession of debtor's residence. (If box checked, complete the following).

_____

(Name of landlord that obtained judgment)

_____

(Address of landlord)

- ❑ Debtor claims that under applicable nonbankruptcy law, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after the judgment for possession was entered, and
- ❑ Debtor has included in this petition the deposit with the court of any rent that would become due during the 30-day period after the filing of the petition.
- ❑ Debtor certifies that he/she has served the Landlord with this certification (11 U.S.C. § 362(l)).

B1 (Official Form 1) (4/10) FORM B1, Page 3

Voluntary Petition *(This page must be completed and filed in every case)*	Name of Debtor(s) Brandon C. Clark, Heidi K. Heffron-Clark
Signatures	
Signature(s) of Debtor(s) (Individual/Joint) I declare under penalty of perjury that the information provided in this petition is true and correct. [If petitioner is an individual whose debts are primarily consumer debts and has chosen to file under chapter 7] I am aware that I may proceed under chapter 7, 11, 12 or 13 of title 11, United States Code, understand the relief available under each such chapter, and choose to proceed under chapter 7. [If no attorney represents me and no bankruptcy petition preparer signs the petition] I have obtained and read the notice required by 11 U.S.C. § 342(b). I request relief in accordance with the chapter of title 11, United States Code, specified in this petition. s/ Brandon C. Clark Signature of Debtor Brandon C. Clark s/ Heidi K. Heffron-Clark Signature of Joint Debtor Heidi K. Heffron-Clark Telephone Number (if not represented by attorney) Date	Signature of a Foreign Representative I declare under penalty of perjury that the information provided in this petition is true and correct, that I am the foreign representative of a debtor in a foreign proceeding, and that I am authorized to file this petition. (Check only one box.) ❑ I request relief in accordance with chapter 15 of Title 11, United States Code. Certified Copies of the documents required by § 1515 of title 11 are attached. ❑ Pursuant to 11 U.S.C. § 1511, I request relief in accordance with the Chapter of title 11 specified in the petition. A certified copy of the order granting recognition of the foreign main proceeding is attached. X Not Applicable (Signature of Foreign Representative) (Printed Name of Foreign Representative) Date

	(Printed Name of Foreign Representative) Date
Signature of Attorney X s/ Denis P. Bartell Signature of Attorney for Debtor(s) Denis P. Bartell Bar No. 1014532 Printed Name of Attorney for Debtor(s)/Bar No. DeWitt Ross & Stevens Firm Name 2 East Mifflin Street Suite 600 Address Madison, WI 53703 608-255-8891 Telephone Number Date *In a case in which § 707(b)(4)(D) applies, this signature also constitutes a certification that the attorney has no knowledge after an inquiry that the information in the schedules is incorrect.	Signature of Non-Attorney Petition Preparer I declare under penalty of perjury that: (1) I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110; (2) I prepared this document for compensation and have provided the debtor with a copy of this document and the notices and information required under 11 U.S.C. §§ 110(b), 110(h), and 342(b); and, (3) if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110(h) setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required in that section. Official Form 19 is attached. Not Applicable Printed Name and title, if any, of Bankruptcy Petition Preparer Social-Security number (If the bankruptcy petition preparer is not an individual,
Signature of Debtor (Corporation/Partnership) I declare under penalty of perjury that the information provided in this petition is true and correct, and that I have been authorized to file this petition on behalf of the debtor. The debtor requests the relief in accordance with the chapter of title 11, United States Code, specified in this petition.	

X Not applicable Signature of Authorized Individual _____ Printed Name of Authorized Individual _____ Title of Authorized Individual _____ Date	state the Social-Security number of the officer, principal, responsible person or partner of the bankruptcy petition preparer.) (Required by 11 U.S. C. § 110.) _____ Address _____ X Not Applicable _____ Date Signature of bankruptcy petition preparer or officer, principal, responsible person, or partner whose Social-Security number is provided above. Names and Social-Security numbers of all other individuals who prepared or assisted in preparing this document unless the bankruptcy petition preparer is not an individual. If more than one person prepared this document, attach to the appropriate official form for each person. *A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 11 U.S.C. § 110; 18 U.S.C. § 156.*

B6A (Official Form SA) (12/07) Case No. _____
In re: Brandon C. Clark Heidi K. Heffron-Clark (if known)
Debtors

SCHEDULE A – REAL PROPERTY

DESCRIPTION AND LOCATION OF PROPERTY	NATURE OF DEBTOR'S INTEREST IN PROPERTY	HUSBAND, WIFE, JOINT OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION	AMOUNT OF SECURED CLAIM
1385 Kaase Rd. Stoughton, WI 53589 Legal Description: Lot Two (2), Certified Survey Map No. 10731, recorded in Dane County Certified Survey Maps Volume 64, page 8, as Document No. 3696605, in the Town of Albion, Dane County, Wisconsin.	Fee Owner	J	$ 448,800.00	$ 364,405.77
		Total >	$ 448,800.00	

(Report also on summary of schedules)

B6B (Official Form 6B) (12/07) Case No. _____

In re Brandon C. Clark Heidi K. Heffron-Clark (If known)
Debtors

SCHEDULE B - PERSONAL PROPERTY

TYPE OF PROPERTY	NONE	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
1. Cash on hand	X			
2. Checking, savings or other financial accounts, certificates of deposit, or shares in banks, savings and loan, thrift, building and loan, and homestead associations, or credit unions, brokerage houses, or cooperatives.		Blackhawk Credit Union checking acct ending 3424	J	300.00
Checking, savings or other financial accounts, certificates of depos-		Blackhawk Credit Union savings acct ending 3424	J	333.27

TYPE OF PROPERTY	NONE	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
it, or shares in banks, savings and loan, thrift, building and loan, and homestead associations, or credit unions, brokerage houses, or co-operatives.				
Checking, savings or other financial accounts, certificates of deposit, or shares in banks, savings and loan, thrift, building and loan, and homestead associations, or credit unions, brokerage houses, or co-operatives.		M&I Bank checking acct ending #5168	J	1,529.75
3. Security deposits with	X			

TYPE OF PROPERTY	NONE	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
public utilities, telephone companies, landlords, and others.				
4. Household goods and furnishings, including audio, video, and computer equipment.		Barbecue Grills	J	50.00
Household goods and furnishings, including audio, video, and computer equipment.		Bath towels and bedding	J	40.00
Household goods and furnishings, including audio, video, and computer equipment.		Beds - $200 Dressers $75	J	275.00
Household		Bicycles	J	170.00

TYPE OF PROPERTY	NONE	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
goods and furnishings, including audio, video, and computer equipment.				
Household goods and furnishings, including audio, video, and computer equipment.		Camera	J	30.00
Household goods and furnishings, including audio, video, and computer equipment.		Chainsaw	J	75.00
Household goods and furnishings, including audio, video, and computer equipment.		China and crystal	J	170.00

TYPE OF PROPERTY	NONE	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
Household goods and furnishings, including audio, video, and computer equipment.		Clothes dryer $200 Washer $200	J	400.00
Household goods and furnishings, including audio, video, and computer equipment.		Coffee and end tables	J	100.00
Household goods and furnishings, including audio, video, and computer equipment.		Computers	J	200.00
4. Household goods and furnishings, including audio, video, and computer		Dining table and chairs	J	275.00

TYPE OF PROPERTY	NONE	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
equipment.				
Household goods and furnishings, including audio, video, and computer equipment.		Dishes, pots, pans, cookware, flatware, glasses, bakeware, tupperware	J	100.00
Household goods and furnishings, including audio, video, and computer equipment.		Dishwasher	J	100.00
Household goods and furnishings, including audio, video, and computer equipment.		DVD Players	J	40.00
Household goods and furnishings, including audio, video, and		Easy Chairs - $50 Foot stool - $25 Rocking chair - $100 Sofa - $200	J	525.00

TYPE OF PROPERTY	NONE	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
computer equipment.		Stero - $150		
Household goods and furnishings, including audio, video, and computer equipment.		Entertainment Center	J	150.00
Household goods and furnishings, including audio, video, and computer equipment.		Fish Tank	J	200.00
Household goods and furnishings, including audio, video, and computer equipment.		Freezer	J	100.00
Household goods and furnishings, including audio,		Gardening Tools	J	50.00

TYPE OF PROPERTY	NONE	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
video, and computer equipment.				
Household goods and furnishings, including audio, video, and computer equipment.		Hutch	J	140.00
Household goods and furnishings, including audio, video, and computer equipment.		Lawn Chairs	J	50.00
Household goods and furnishings, including audio, video, and computer equipment.		Lawn Mower	J	100.00
Household goods and furnishings, in-		Microwave	J	50.00

TYPE OF PROPERTY	NONE	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
cluding audio, video, and computer equipment.				
Household goods and furnishings, including audio, video, and computer equipment.		Patio furniture	J	200.00
Household goods and furnishings, including audio, video, and computer equipment.		Refrigerator	J	100.00
Household goods and furnishings, including audio, video, and computer equipment.		Small kitchen appliances	J	80.00
Household goods and fur-		Stereo and radios	J	200.00

TYPE OF PROPERTY	NONE	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
nishings, including audio, video, and computer equipment.				
Household goods and furnishings, including audio, video, and computer equipment.		Stove	J	200.00
Household goods and furnishings, including audio, video, and computer equipment.		Television sets	J	300.00
Household goods and furnishings, including audio, video, and computer equipment.		Vacuum cleaners	J	50.00

TYPE OF PROPERTY	NONE	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
Household goods and furnishings, including audio, video, and computer equipment.		Various tools	J	200.00
Household goods and furnishings, including audio, video, and computer equipment.		Video camera	J	100.00
Household goods and furnishings, including audio, video, and computer equipment.		Video game machine and video games	J	35.00
Household goods and furnishings, including audio, video, and computer		Weedwacker	J	25.00

TYPE OF PROPERTY	NONE	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
equipment.				
5. Books, pictures and other art objects, antiques, stamp, coin, record, tape, compact disc, and other collections or collectibles.		Artwork	J	150.00
6. Wearing apparel.		Clothing	J	200.00
7. Furs and jewelry.		Costume Jewelry	J	100.00
Furs and jewelry.		Watches		50.00
Furs and jewelry.		Wedding rings	J	1,000.00
8. Firearms and sports, photographic, and other hobby equipment.		Camping equipment	J	100.00

TYPE OF PROPERTY	NONE	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
Firearms and sports, photographic, and other hobby equipment.		Fishing poles and tackle	J	100.00
Firearms and sports, photographic, and other hobby equipment.		Rifle - $150 Shotgun - $200.00	J	350.00
Firearms and sports, photographic, and other hobby equipment.		Snowboard and skis	J	120.00
9. Interests in insurance policies. Name insurance company of each policy and itemize surrender or refund value of each.		Aviva Life and Annuity Company. Whole life insurance policy ending #8117	J	3,234.36

TYPE OF PROPERTY	NONE	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
Interests in insurance policies. Name insurance company of each policy and itemize surrender or refund value of each.		Ohio National Financial Srvs Life Ins Policy No. ending 4641	J	9,725.46
Interests in insurance policies. Name insurance company of each policy and itemize surrender or refund value of each.		Thirvent Financial for Lutherans Life Ins Policy acct ending #3866	J	2,584.09
10. Annuities. Itemize and name each issuer.	X			
11. Interests in an education IRA as defined in 26 U.S.C. §	X			

TYPE OF PROPERTY	NONE	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
530(b)(1) or under a qualified State tuition plan as defined in 26 U.S.C. § 529(b)(1). Give particulars. (File separately the record(s) of any such interest(s). 11 U.S.C. § 521 (c))				
12. Interests in IRA, ERISA, Keogh, or other pension or profit sharing plans. Give particulars.		Pershing Beneficiary IRA acct ending 7132	J	293,337.60
Interests in IRA, ERISA, Keogh, or other pension or profit sharing plans. Give particulars.		Wells Fargo Construction Ind. Retirement Fund of Rockford, IL	J	2,801.00

TYPE OF PROPERTY	NONE	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
Interests in IRA, ERISA, Keogh, or other pension or profit sharing plans. Give particulars.		Wisconsin Masons Pension Fund	J	933.37
13. Stock and interests in incorporated and unincorporated businesses. Itemize.		Clark Ventures, Inc. See attached assets and liabilities	J	0.00
14. Interests in partnerships or joint ventures. Itemize.	X			
15. Government and corporate bonds and other negotiable and nonnegotiable instruments.	X			
16. Accounts receivable.	X			

TYPE OF PROPERTY	NONE	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
17. Alimony, maintenance, support, and property settlements to which the debtor is or may be entitled. Give particulars.	X			
18. Other liquidated debts owed to debtor including tax refunds. Give particulars.	X			
19. Equitable or future interests, life estates, and rights or powers exercisable for the benefit of the debtor other than those listed in Schedule A - Real Property.	X			

TYPE OF PROPERTY	NONE	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
20. Contingent and noncontingent interests in estate of a decedent, death benefit plan, life insurance policy, or trust.	X			
21. Other contingent and unliquidated claims of every nature, including tax refunds, counterclaims of the debtor, and rights to setoff claims. Give estimated value of each.	X			
22. Patents, copyrights, and other intellectual property. Give particulars.	X			

TYPE OF PROPERTY	NONE	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
23. Licenses, franchises, and other general intangibles. Give particulars.	X			
24. Customer lists or other compilations containing personally identifiable information (as defined in 11 U.S.C. § 101 (41A)) provided to the debtor by individuals in connection with obtaining a product or service from the debtor primarily for personal, family, or household purposes.	X			

TYPE OF PROPERTY	NONE	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
25. Automobiles, trucks, trailers, and other vehicles and accessories.		1978 Chevy Malibu (does not run)	J	200.00
Automobiles, trucks, trailers, and other vehicles and accessories.		1997 Oldmobile (does not run)	J	200.00
Automobiles, trucks, trailers, and other vehicles and accessories.		2000 Chevy Silverado (does not run)	J	2,000.00
Automobiles, trucks, trailers, and other vehicles and accessories.		2006 Chevy Silverado Crew Cab	J	26,000.00
Automobiles, trucks, trailers, and other vehicles and accessories.		2007 GMC Yukon XL	J	27,620.00

TYPE OF PROPERTY	NONE	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
26. Boats, motors, and accessories.	X			
27. Aircraft and accessories.	X			
28. Office equipment, furnishings, and supplies.	X			
29. Machinery, fixtures, equipment and supplies used in business.	X			
30. Inventory.	X			
31. Animals.	X			
32. Crops - growing or harvested. Give particulars.	X			
33. Farming equipment and implements.	X			

TYPE OF PROPERTY	NONE	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
34. Farm supplies, chemicals, and feed.	X			
35. Other personal property of any kind not already listed. Itemize.	X			
		Total		$ 377,848.90

4 continuation sheets attached

(Include amounts from any continuation sheets attached. Report total also on Summary of Schedules.)

Clark Ventures, Inc.

October 1, 2010

Assets:	
Restaurant Equipment	$4,000
Liabilities:	
Evergreen State Bank	$149,482
Vendors:	106,249
	$255,731
Net Value	$(251,731)

B6C (Official Form 6C) (4/10)

In re Brandon C. Clark Heidi K. Heffron-Clark Case No. _____
Debtors (If known)

SCHEDULE C – PROPERTY CLAIMED AS EXEMPT

Debtor claims the exemptions to which debtor is entitled under: (Check one box)
❑ 11 U.S.C. § 522(b)(2)
☑ 11 U.S.C. § 522(b)(3)

❑ Check if debtor claims a homestead exemption that exceeds $146,450.*

DESCRIPTION OF PROPERTY	SPECIFY LAW PROVIDING EACH EXEMPTION	VALUE OF CLAIMED EXEMPTION	CURRENT VALUE OF PROPERTY WITHOUT DEDUCTING EXEMPTION
1385 Kaase Rd Stoughton, WI 53589 Legal Description: Lot Two (2), Certified Survey Map No. 10731, recorded in Dane County Certified Survey Maps Volume 64, page 8, as Document No. 3696605, in the Town of Albion, Dane County, Wisconsin.	WSA § 815.20	150,000.00	448,800.00

DESCRIPTION OF PROPERTY	SPECIFY LAW PROVIDING EACH EXEMPTION	VALUE OF CLAIMED EXEMPTION	CURRENT VALUE OF PROPERTY WITHOUT DEDUCTING EXEMPTION
2006 Chevy Silverado Crew Cab	WSA § 815.18(3)(d) WSA § 815.18(3)(g)	18,825.00 5,000.00	26,000.00
2007 GMC Yukon XL	WSA § 815.18(3)(g)	3,000.00	27,620.00
Artwork	WSA § 815.18(3)(d)	100.00	150.00
Aviva Life and Annuity Company. Whole life insurance policy ending #8117	WSA § 815.18(3)(f)	3,234.36	3,234.36
Barbecue Grills	WSA § 815.18(3)(d)	25.00	50.00
Bath towels and bedding	WSA § 815.18(3)(d)	20.00	40.00
Beds - $200 Dressers $75	WSA § 815.18(3)(d)	200.00	275.00
Bicycles	WSA § 815.18(3)(d)	125.00	170.00
Blackhawk Credit Union checking acct ending 3424	WSA § 815.18(3)(k)	300.00	300.00
Blackhawk Credit Union savings acct ending 3424	WSA § 815.18(3)(k)	333.27	333.27
Camera	WSA § 815.18(3)(d)	25.00	30.00
Camping equipment	WSA § 815.18(3)(d)	75.00	100.00

DESCRIPTION OF PROPERTY	SPECIFY LAW PROVIDING EACH EXEMPTION	VALUE OF CLAIMED EXEMPTION	CURRENT VALUE OF PROPERTY WITHOUT DEDUCTING EXEMPTION
Chainsaw	WSA § 815.18(3)(d)	50.00	75.00
China and crystal	WSA § 815.18(3)(d)	150.00	170.00
Clothes dryer $200 Washer $200	WSA § 815.18(3)(d)	150.00	400.00
Clothing	WSA § 815.18(3)(d)	100.00	200.00
Coffee and end tables	WSA § 815.18(3)(d)	75.00	100.00
Computer	WSA § 815.18(3)(d)	150.00	200.00
Costume jewelry	WSA § 815.18(3)(d)	50.00	100.00
Dining table and chairs	WSA § 815.18(3)(d)	200.00	275.00
Dishes, pots, pans, cookware, flatware, glasses, bakeware, tupperware	WSA § 815.18(3)(d)	75.00	100.00
Dishwasher	WSA § 815.18(3)(d)	75.00	100.00
DVD Players	WSA § 815.18(3)(d)	35.00	40.00
Easy Chairs - $50 Foot stool - $25 Rocking chair - $100 Sofa - $200 Stero - $150	WSA § 815.18(3)(d)	475.00	525.00
Entertainment Center	WSA § 815.18(3)(d)	100.00	150.00

DESCRIPTION OF PROPERTY	SPECIFY LAW PROVIDING EACH EXEMPTION	VALUE OF CLAIMED EXEMPTION	CURRENT VALUE OF PROPERTY WITHOUT DEDUCTING EXEMPTION
Fish Tank	WSA § 815.18(3)(d)	100.00	200.00
Fishing poles and tackle	WSA § 815.18(3)(d)	75.00	100.00
Freezer	WSA § 815.18(3)(d)	75.00	100.00
Gardening tools	WSA § 815.18(3)(d)	40.00	50.00
Hutch	WSA § 815.18(3)(d)	130.00	140.00
Lawn Chairs	WSA § 815.18(3)(d)	25.00	50.00
Lawn Mower	WSA § 815.18(3)(d)	75.00	100.00
M&I Bank checking acct ending #5168	WSA § 815.18(3)(k)	1,529.75	1,529.75
Microwave	WSA § 815.18(3)(d)	50.00	50.00
Ohio National Financial Srvs Life Ins Policy No. ending 4641	WSA § 815.18(3)(f)	9,725.00	9,725.46
Patio furniture	WSA § 815.18(3)(d)	175.00	200.00
Pershing Beneficiary IRA acct ending 7132.	WSA § 815.18(3)(j)	293,337.60	293,337.60
Refrigerator	WSA § 815.18(3)(d)	75.00	100.00
Rifle - $150 Shotgun - $200	WSA § 815.18(3)(d)	200.00	350.00
Small kitchen appliances	WSA § 815.18(3)(d)	75.00	80.00

DESCRIPTION OF PROPERTY	SPECIFY LAW PROVIDING EACH EXEMPTION	VALUE OF CLAIMED EXEMPTION	CURRENT VALUE OF PROPERTY WITHOUT DEDUCTING EXEMPTION
Snowboard and skis	WSA § 815.18(3)(d)	100.00	120.00
Stereo and radios	WSA § 815.18(3)(d)	150.00	200.00
Stove	WSA § 815.18(3)(d)	175.00	200.00
Television sets	WSA § 815.18(3)(d)	250.00	300.00
Thirvent Financial for Lutherans life Ins Policy acct ending #3866	WSA § 815.18(3)(f)	2,584.09	2,584.09
Vacuum cleaners	WSA § 815.18(3)(d)	35.00	50.00
Various tools	WSA § 815.18(3)(d)	170.00	200.00
Video camera	WSA § 815.18(3)(d)	75.00	100.00
Video game machine and video games	WSA § 815.18(3)(d)	20.00	35.00
Watches	WSA § 815.18(3)(d)	35.00	50.00
Wedding rings	WSA § 815.18(3)(d)	800.00	1,000.00
Weedwacker	WSA § 815.18(3)(d)	15.00	25.00
Wells Fargo Construction Ind. Retirement Fund of Rockford, IL	WSA § 815.18(3)(j)	2,801.00	2,801.00

DESCRIPTION OF PROPERTY	SPECIFY LAW PROVIDING EACH EXEMPTION	VALUE OF CLAIMED EXEMPTION	CURRENT VALUE OF PROPERTY WITHOUT DEDUCTING EXEMPTION
Wisconsin Masons Pension Fund	WSA § 815.18(3)(j)	933.37	933.37

**Amount subject to adjustment on 4/1/13 and every three years thereafter with respect to cases commenced on or after the date of adjustment.*

B6D (Official Form 6D) (12/07)

In re Brandon C. Clark Heidi K. Heffron-Clark Case No. _____
Debtors (If known)

SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS

❑ Check this box if debtor has no creditors holding secured claims to report on this Schedule D.

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE AND AN ACCOUNT NUMBER (See Instructions, Above.)	CODEBTOR	HUSBAND, WIFE, JOINT OR COMMUNITY	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND VALUE OF PROPERTY SUBJECT TO LIEN	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY
Account No. 0102		J						
Evergreen State Bank P.O. Box 427 Stoughton, WI 53589-0427			First Lien on Residence 1385 Kaase Rd Stoughton, WI 53589 Mortgage recorded April 13, 2005 as Document No. 4041660 with the Dane County Register of Deeds.				280,025.00	0.00

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE AND AN ACCOUNT NUMBER (See Instructions, Above.)	CODEBTOR	HUSBAND, WIFE, JOINT OR COMMUNITY	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND VALUE OF PROPERTY SUBJECT TO LIEN	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY
			VALUE $448,800.00					
Account No. 0100		J						
First Horizon P.O. Box 2351 Memphis, TN 38101			Second Lien on Residence 1385 Kaase Rd Stoughton, WI 53589 Mortgage recorded March 28, 2006, as Document No. 4174777 with the Dane County Register of Deeds. VALUE $448,800.00				84,380.77	0.00

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE AND AN ACCOUNT NUMBER (See Instructions, Above.)	CODEBTOR	HUSBAND, WIFE, JOINT OR COMMUNITY	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND VALUE OF PROPERTY SUBJECT TO LIEN	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY
Account No. 0001		J						
M&I Bank P.O. Box 3186 Milwaukee, WI 53201-3186			Security Agreement 2007 GMC Yukon XL VALUE $27,620.00				19,313.00	0.00

0 continuation sheets attached

Subtotal > (Total of this page)	$ 383,718.77	$ 0.00
Total > (Use only on last page)	$ 383,718.77	$ 0.00

(Report also on Summary of Schedules)

(If applicable, report also on Statistical Summary of Certain Liabilities and Related Data.)

B6E (Official Form 6E) (4/10)

In re Brandon C. Clark Heidi K. Heffron-Clark Case No. _____
Debtors (If known)

SCHEDULE E - CREDITORS HOLDING UNSECURED CLAIMS

☑ Check this box if debtor has no creditors holding unsecured priority claims to report on this Schedule E.

TYPES OF PRIORITY CLAIMS (Check the appropriate box(es) below if claims in that category are listed on the attached sheets.)

❑ Domestic Support Obligations

Claims for domestic support that are owed to or recoverable by a spouse, former spouse, or child of the debtor, or the parent, legal guardian, or responsible relative of such a child, or a governmental unit to whom such a domestic support claim has been assigned to the extent provided in 11 U.S.C. § 507(a)(1).

❑ Extensions of credit in an involuntary case

Claims arising in the ordinary course of the debtor's business or financial affairs after the commencement of the case but before the earlier of the appointment of a trustee or the order for relief. 11 U.S.C. § 507(a)(3).

❑ Wages, salaries, and commissions

Wages, salaries, and commissions, including vacation, severance, and sick leave pay owing to employees and commissions owing to qualifying independent sales representatives up to $11,725* per person earned within 180 days immediately preceding the filing of the original petition, or the cessation of business, whichever oc-

curred first, to the extent provided in 11 U.S.C. § 507(a)(4).

❑ Contributions to employee benefit plans

Money owed to employee benefit plans for services rendered within 180 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. § 507(a)(5).

❑ Certain farmers and fishermen

Claims of certain farmers and fishermen, up to $5,775* per farmer or fisherman, against the debtor, as provided in 11 U.S.C. § 507(a)(6).

❑ Deposits by individuals

Claims of individuals up to $2,600* for deposits for the purchase, lease, or rental of property or services for personal, family, or household use, that were not delivered or provided. 11 U.S.C. § 507(a)(7).

☑ Taxes and Certain Other Debts Owed to Governmental Units

Taxes, customs duties, and penalties owing to federal, state, and local governmental units as set forth in 11 U.S.C. § 507(a)(8).

❑ Commitments to Maintain the Capital of an Insured Depository Institution

Claims based on commitments to the FDIC, RTC, Director of the Office of Thrift Supervision, Comptroller of the Currency, or Board of Governors of the Federal Reserve System, or their predecessors or successors, to maintain the capital of an insured depository institution. 11 U.S.C. § 507(a)(9).

❑ Claims for Death or Personal Injury While Debtor Was Intoxicated

Claims for death or personal injury resulting from the operation of a motor vehicle or vessel while the debtor was intoxicated from using alcohol, a drug, or another substance. 11 U.S.C. § 507(a)(10).

*Amounts are subject to adjustment on 4/01/13, and every three years thereafter with respect to cases commenced on or after the date of adjustment.

1 continuation sheets attached

B6F (Official Form 6F) (12/07)

In re Brandon C. Clark Heidi K. Heffron-Clark Case No. _____
Debtors (If known)

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS

☐ Check this box if debtor has no creditors holding unsecured claims to report on this Schedule F.

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE AND AN ACCOUNT NUMBER *(See Instructions above.)*	CODEBTOR	HUSBAND, WIFE, JOINT OR COMMUNITY	DATE CLAIM WAS INCURRED, AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
Account No. 8010		J					
Alliant Energy P.O. Box 3068 Cedar Rapids, IA 52406-3068			Obligation of Clark Ventures, Inc. d/b/a St. Louis Pizza & More			X	830.00
Account No. 3387		J					
American Marketing & Publishing c/o Rauch-Milliken Intern'l, Inc. P.O. Box 8390 Metairie, LA 70011-8390 Transworld systems P.O. Box 1864 Santa Rosa, CA 95402			Obligation of Clark Ventures, Inc. d/b/a St. Louis Pizza & More			X	457.00

Account No. 4001		J					
Aramark P.O. Box 8280 Madison, Wl53708-8280			Obligation of Clark Ventures, Inc. d/b/a St. Louis Pizza & More			X	1,019.00
Account No.		J					
Badger Fire Protection 918 Jonathan Dr. Madison, WI 53713			Obligation of Clark Ventures, Inc. d/b/a St. Louis Pizza & More			X	169.00

9 Continuation sheets attached

Subtotal	$ 2,475.00
Total	$

(Use only on last page of the completed Schedule F.) (Report also on Summary of Schedules and, if applicable on the Statistical Summary of Certain Liabilities and Related Data.)

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE AND AN ACCOUNT NUMBER *(See instructions above.)*	CODEBTOR	HUSBAND, WIFE, JOINT OR COMMUNITY	DATE CLAIM WAS INCURRED, AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
Account No. 8293/9570		J					
Bank of America P.O. Box 15026 Wilmington, DE 19850-5026 Sunrise Credit Services, Inc. P.O. Box 9100 Farmington, NY 11735-9100			Credit Purchases 2008-2010				16,622.00
Account No. 0085		J					
Capital Newspapers 1901 Fish Hatchery Rd Madison, WI 53708-0080 H.E. Stark Agency, Inc. P.O. Box 45710 Madison, WI 53744-5710			Obligation of Clark Ventures, Inc. d/b/a St. Louis Pizza & More			X	932.00
Account No. 9350		J					
Chase Card Services P.O. Box 94014 Palatine, IL 60094-4014			Credit Purchases 2009-2010				2,627.00

Account No. 2245		J					
City of Stoughton 381 East Main Street Stoughton, WI 53589 Matthew T. Roethe Roethe Krohn Pope, LLC 24 N. Henry Street Edgerton, WI 53534			Obligation of Clark Ventures, Inc. d/b/a St. Louis Pizza & More			X	187.00

Sheet no. 1 of 9 Continuation sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims

Subtotal	$ 20,368.00
Total	$

(Use only on last page of the completed Schedule F.) (Report also on Summary of Schedules and, if applicable on the Statistical Summary of Certain Liabilities and Related Data.)

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE AND AN ACCOUNT NUMBER *(See instructions above.)*	CODEBTOR	HUSBAND, WIFE, JOINT OR COMMUNITY	DATE CLAIM WAS INCURRED, AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
Account No.		J					
Commercial Air, Inc. P.O. Box 8367 Madison, WI 53708			Obligation of Clark Ventures, Inc. d/b/a St. Louis Pizza & More			X	883.00
Account No.		J					
Deer Point Storage 1503 Oak Opening Stoughton, WI 53589			Storage unit 2010				876.00
Account No. 9709		J					
Direct Loan Servicing U.S. Dept. of Education P.O. Box 5609 Greenville, TX 75403-5609			Student Loan 2009-2010				18,976.22
Account No. 1597		J					
Direct TV c/o Allied Interstate P.O. Box 361477 Columbus, OH 43236			Services rendered				928.00

Sheet no. 2 of 9 Continuation sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims

Subtotal	$ 21,663.22

(Use only on last page of the completed Schedule F.) (Report also on Summary of Schedules and, if applicable on the Statistical Summary of Certain Liabilities and Related Data.)	Total $

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE AND AN ACCOUNT NUMBER *(See instructions above.)*	CODEBTOR	HUSBAND, WIFE, JOINT OR COMMUNITY	DATE CLAIM WAS INCURRED, AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
Account No. 2408		J					
Discover Card P.O. Box 30943 Salt Lake City, UT 84130-0395 Atty. James F. Guckenberg Kohn Law Firm 312 E. Wisconsin Ave., Ste 501 Milwaukee, WI 53202-4305			Credit Purchases 2007-2008				13,621.00
Account No. 2819		J					
Evergreen State Bank 207 S. Forrest Street P.O. Box427 Stoughton, WI 53589-0427 Attorney Patricia Gibeault Axley Brynelson, LLP P.O. Box 1767 Madison, WI 53701-4305			Obligation of Clark Ventures, Inc. Debtors personally guaranteed			X	149,428.42

Account No. 8293		J				
FIA Card Services, N.A. P.O. Box 15137 Wilmington, DE 19850-5137 Pennero Associates, Inc. P.O. Box 538 Oaks, PA 19456			Credit purchases 2008-2010			3,012.83

Sheet no. 3 of 9 Continuation sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims

(Use only on last page of the completed Schedule F.) (Report also on Summary of Schedules and, if applicable on the Statistical Summary of Certain Liabilities and Related Data.)

Subtotal	$ 166,062.25
Total	$

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE AND AN ACCOUNT NUMBER *(See instructions above.)*	CODEBTOR	HUSBAND, WIFE, JOINT OR COMMUNITY	DATE CLAIM WAS INCURRED, AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
Account No.		J					
Historic Stoughton Business Alliance P.O. Box 123 Stoughton, WI 53589			Obligation of Clark Ventures, Inc. d/b/a St. Louis Pizza & More			X	180.00
Account No. 5896		J					
Home Pages Directories P.O. Box 982 DeKalb, IL 60115 Pamela Pesek McCarthy, Burgess & Wolff 26000 Cannon Road Cleveland, OH 44146			Obligation of Clark Ventures, Inc. d/b/a St. Louis Pizza & More			X	549.00
Account No. 7430		J					
IMS 16901 West Glendale Drive New Berlin, WI 53151			Obligation of Clark Ventures, Inc. d/b/a St. Louis Pizza & More			X	330.00

Account No. 561		J					
Just in Time, LLC 2210 Harrison Ave. Rockford, IL 61104			Obligation of Clark Ventures, Inc. d/b/a St. Louis Pizza & More			X	1,330.00

Sheet no. 4 of 9 Continuation sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims

(Use only on last page of the completed Schedule F.) (Report also on Summary of Schedules and, if applicable on the Statistical Summary of Certain Liabilities and Related Data.)

Subtotal	$ 2,389.00
Total	$

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE AND AN ACCOUNT NUMBER *(See instructions above.)*	CODEBTOR	HUSBAND, WIFE, JOINT OR COMMUNITY	DATE CLAIM WAS INCURRED, AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
Account No. 0001		J					
Midwest Family Broadcasting 730 Rayovac Drive Madison, WI 53711			Obligation of Clark Ventures, Inc. d/b/a St. Louis Pizza & More			X	180.00
Account No. 250		J					
Peterson Pest Management 1031 Flint Road Stoughton, WI 53539			Obligation of Clark Ventures, Inc. d/b/a St. Louis Pizza & More			X	36.00
Account No. 2969		J					
Pitney Bowes c/o Credt Management Corp P.O. Box 1396 Madison, CT 06443-1396			Obligation of Clark Ventures, Inc. d/b/a St. Louis Pizza & More			X	245.00

Account No. 5323		J					
Quill Corporation c/o CCS, Inc. P.O. Box 22630 Cleveland, OH 44122 CCS, Inc. P.O. Box 22630 Cleveland, OH 44122-0630			Obligation of Clark Ventures, Inc. d/b/a St. Louis Pizza & More			X	157.00

Sheet no. 5 of 9 Continuation sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims

(Use only on last page of the completed Schedule F.) (Report also on Summary of Schedules and, if applicable on the Statistical Summary of Certain Liabilities and Related Data.)

Subtotal	$ 618.00
Total	$

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE AND AN ACCOUNT NUMBER *(See instructions above.)*	CODEBTOR	HUSBAND, WIFE, JOINT OR COMMUNITY	DATE CLAIM WAS INCURRED, AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
Account No. 609		J					
Retail Data Systems of WI 1900 Pewaukee Rd., Suite M Waukesha, WI 53188			Obligation of Clark Ventures, Inc. d/b/a St. Louis Pizza & More			X	7,281.00
Account No.		J					
Rusl Adili, d/b/a Kegonsa Plaza 778 Hwy MM Oregon, WI 53575 Atty. David R. Friedman Friedman Law Firm 30 W. Mifflin Street, #1001 Madison, WI 53703-2591			11/11/2009 Obligation arising from former business, Clark Ventures, Inc. Debtor personally guaranteed				80,397.74
Account No.		J					
Sheldon Plumbing 408 S. Nine Mound Rd., Suite A Verona, WI 53593			Obligation of Clark Ventures, Inc. d/b/a St. Louis Pizza & More			X	250.00

Account No. 0686		J				
Society Insurance P.O. Box 1029 Fond du Lac, WI 54936	Obligation of Clark Ventures, Inc. d/b/a St. Louis Pizza & More			X	56.00	

Sheet no. 6 of 9 Continuation sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims

Subtotal	$ 87,984.74
Total	$

(Use only on last page of the completed Schedule F.) (Report also on Summary of Schedules and, if applicable on the Statistical Summary of Certain Liabilities and Related Data.)

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE AND AN ACCOUNT NUMBER *(See instructions above.)*	CODEBTOR	HUSBAND, WIFE, JOINT OR COMMUNITY	DATE CLAIM WAS INCURRED, AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
Account No. 5468		J					
St. Mary's Hospital 700 Park Sreet Madison, WI 53715 Key Financial Services, LLC P.O. Box 6216 Madison, WI 53716-0216			Services Rendered				1,250.00
Account No. 9161		J					
Stumps.com Dept. 0398 P.O. Box 120398 Dallas, TX 75312-0398			Credit Purchases 2009-2010				80.00
Account No. 6843		J					
Sysco Food Services 910 S. Boulevard Baraboo, WI 53913-2793			Obligation of Clark Ventures, Inc. d/b/a St. Louis Pizza & More			X	481.00

Sheet no. 7 of 9 Continuation sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims

Subtotal	$ 1,811.00

(Use only on last page of the completed Schedule F.) (Report also on Summary of Schedules and, if applicable on the Statistical Summary of Certain Liabilities and Related Data.)	Total $

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE AND AN ACCOUNT NUMBER *(See instructions above.)*	CODEBTOR	HUSBAND, WIFE, JOINT OR COMMUNITY	DATE CLAIM WAS INCURRED, AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
Account No. 1900		J					
TDS Metrocom P.O. Box 94510 Paletine, IL 60094-4510 H.E. Stark P.O. Box 45710 Madison, WI 53744 West Asset Management 7171 Mercy Road Omaha, NE 68106			Obligation of Clark Ventures, Inc. d/b/a St. Louis Pizza & More			X	379.00
Account No.		J					
Telegraph Herald 801 Bluff Street P.O. Box 688 Dubuque, IA 52004-0688 Antoinette Kunde, Paralegal Murphy Desmond S.C. 33 E. Main Street, Suite 500 Madison, WI 53703-3095			Obligation of Clark Ventures, Inc. d/b/a St. Louis Pizza & More			X	1,958.00

Account No. 0000		J					
TigerTranz 4200 Regent Street, Suite 200 Columbus, OH 43219-6229			Credit Purchases 2010				46.00

Sheet no. 8 of 9 Continuation sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims

(Use only on last page of the completed Schedule F.) (Report also on Summary of Schedules and, if applicable on the Statistical Summary of Certain Liabilities and Related Data.)

Subtotal	$ 2,383.00
Total	$

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE AND AN ACCOUNT NUMBER *(See instructions above.)*	CODEBTOR	HUSBAND, WIFE, JOINT OR COMMUNITY	DATE CLAIM WAS INCURRED, AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
Account No. 0960		J					
Unified Newspaper Group 133 Enterprise Drive P.O. Box 930427 Verona, WI 53593			Obligation of Clark Ventures, Inc. d/b/a St. Louis Pizza & More			X	2,125.00
Account No. 2800		J					
Waste Management of WI WI32 N10487 Grant Drive Germantown, WI 53022			Obligation of Clark Ventures, Inc. d/b/a St. Louis Pizza & More			X	292.00
Account No.		J					
Wells Fargo 911 W. Main Street Stougton, WI 53589			checking account overdraft				280.03
Account No.		J					
Wisconsin Distributors 900 Progress Way Sun Prairie, WI 53590			Obligation of Clark Ventures, Inc. d/b/a St. Louis Pizza & More			X	90.00

Account No. 37AR		J					
Yellowbook 6300 C Street Cedar Rapids, IA 52404-7470			Obligation of Clark Ventures, Inc. d/b/a St. Louis Pizza & More			X	2,633.00

Sheet no. 9 of 9 Continuation sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims

(Use only on last page of the completed Schedule F.) (Report also on Summary of Schedules and, if applicable on the Statistical Summary of Certain Liabilities and Related Data.)

Subtotal	$ 5,420.03
Total	$ 311,174.24

B6G (Official Form 6G) (12/07)

In re Brandon C. Clark Heidi K. Heffron-Clark Case No. _____
Debtors (If known)

SCHEDULE G – EXECUTORY CONTRACTS AND EXPIRED LEASES

☑ Check this box if debtor has no executor contracts or unexpired leases

NAME AND MAILING ADDRESS, INCLUDING ZIP CODE, OF OTHER PARTIES TO LEASE OR CONTRACT	DESCRIPTION OF CONTRACT OR LEASE AND NATURE OF DEBTOR'S INTEREST, STATE WHETHER LEASE IS FOR NONRESIDENTIAL REAL PROPERTY. STATE CONTRACT NUMBER OF ANY GOVERNMENT CONTRACT.

B6H (Official Form 6H) (12/07)

In re Brandon C. Clark Heidi K. Heffron-Clark Case No. _____
Debtors (If known)

SCHEDULE H – CODEBTORS

☐ Check this box if debtor has no codebtors.

NAME AND ADDRESS OF CODEBTOR	NAME AND ADDRESS OF CREDITOR
Clark Ventures, Inc. 1385 Kaase Road Stoughton, WI 53589	Evergreen State Bank 207 S. Forrest Street P.O. Box 427 Stoughton, WI 53589-0427

B6I (Official Form 6I) (12/07)

In re Brandon C. Clark Heidi K. Heffron-Clark Case No. _____
Debtors (If known)

SCHEDULE I – CURRENT INCOME OF INDIVIDUAL DEBTOR(S)

The column labeled "Spouse" must be completed in all cases filed by joint debtors and by every married debtor, whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed. Do not state the name of any minor child. The average monthly income calculated on this form may differ from the current monthly income calculated on Form 22A, 22B, or 22C.

Debtor's Marital Status: Married	DEPENDENTS OF DEBTOR AND SPOUSE RELATIONSHIP(S): Son	AGE(S): 3
Employment:	DEBTOR	SPOUSE
Occupation	Mason/Bricklayer	Cashier/Retail Sales
Name of Employer	J.P. Cullen & Sons, Inc.	Cracker Barrel Old Country Store
How long employed	12 years	6 months
Address of Employer	330 East Delavan Drive Janesville, WI	2430 Fulton Janesville, WI

INCOME: (Estimate of average or projected monthly income at time case filed)

	DEBTOR	SPOUSE
1. Monthly gross wages, salary, and commissions (Prorate if not paid monthly.)	4,176.57	1,289.90
2. Estimate monthly overtime	0.00	0.00
3. SUBTOTAL	4,176.57	1,289.90

4. LESS PAYROLL DEDUCTIONS		
a. Payroll taxes and social security	885.46	227.37
b. Insurance	0.00	0.00
c. Union dues	92.00	0.00
d. Other (Specify)	0.00	0.00
5. SUBTOTAL OF PAYROLL DEDUCTIONS	977.46	227.37
6. TOTAL NET MONTHLY TAKE HOME PAY	3,199.11	1,062.53
7. Regular income from operation of business or profession or farm (Attach detailed statement)	0.00	0.00
8. Income from real property	0.00	0.00
9. Interest and dividends	0.00	0.00
10. Alimony, maintenance or support payments payable to the debtor for the debtor's use or that of dependents listed above.	0.00	0.00
11 . Social security or other government assistance (Specify)	0.00	0.00
12. Pension or retirement income	0.00	2,272.20
13. Other monthly income (Specify)	0.00	0.00
14. SUBTOTAL OF LINES 7 THROUGH 13	0.00	2,272.20
15. AVERAGE MONTHLY INCOME (Add amounts shown on lines 6 and 14)	3,199.11	3,334.73
16. COMBINED AVERAGE MONTHLY INCOME: (Combine column totals from line 15)	$6,533.84	

(Report also on Summary of Schedules and, if applicable, on Statistical Summary of Certain Liabilities and Related Data)

17. Describe any increase or decrease in income reasonably anticipated to occur within the year following the filing of this document:
NONE

B6J (Official Form 6J) (12/07)

In re Brandon C. Clark Heidi K. Heffron-Clark Case No. _____
Debtors (If known)

SCHEDULE J – CURRENT EXPENDITURES OF INDIVIDUAL DEBTOR(S)

Complete this schedule by estimating the average or projected monthly expenses of the debtor and the debtor's family at time case filed. Prorate any payments made biweekly, quarterly, semi-annually, or annually to show monthly rate. The average monthly expenses calculated on this form may differ from the deductions from income allowed on Form22A or 22C.

❑ Check this box if a joint petition is filed and debtor's spouse maintains a separate household. Complete a separate schedule of expenditures labeled "Spouse."

1. Rent or home mortgage payment (include lot rented for mobile home)	$ 2,299.00
a. Are real estate taxes included? Yes No ✓	
b. Is property insurance included? Yes No ✓	
2. Utilities: a. Electricity and heating fuel	$ 250.00
b. Water and sewer	$ 0.00
c. Telephone	$ 100.00
d. Other Cable/Satelite	$ 175.00
3. Home maintenance (repairs and upkeep)	$ 50.00
4. Food	$ 500.00
5. Clothing	$ 100.00
6. Laundry and dry cleaning	$ 20.00
7. Medical and dental expenses	$ 50.00
8. Transportation (not including car payments)	$ 400.00

9. Recreation, clubs and entertainment, newspapers, magazines, etc.	$ 100.00
10. Charitable contributions	$ 0.00
11. Insurance (not deducted from wages or included in home mortgage payments)	
a. Homeowner's or renters	$ 45.91
b. Life	$ 300.00
c. Health	$ 0.00
d. Auto	$ 140.00
e. Other _____	$ 0.00
12. Taxes (not deducted from wages or included in home mortgage payments (Specify) Property taxes	$ 500.00
13. Installment payments: (In chapter 11, 12, and 13 cases, do not list payments to be included in the plan)	
a. Auto	$ 600.00
b. Other _____	$ 0.00
14. Alimony, maintenance, and support paid to others	$ 0.00
15. Payments for support of additional dependents not living at your home	$ 0.00
16. Regular expenses from operation of business, profession, or farm (attach detailed statement)	$ 0.00
17. Other Child care	$ 866.00
18. AVERAGE MONTHLY EXPENSES (Total lines 1-17. Report also on Summary of Schedules and, if applicable, on the Statistical Summary of Certain Liabilities and Related Data.)	$ 6,495.91

19. Describe any increase or decrease in expenditures reasonably anticipated to occur within the year following the filing of this document. _____

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20. STATEMENT OF MONTHLY NET INCOME

a. Average monthly income from Line 15 of Schedule 1	$ 6,533.84
b. Average monthly expenses from Line 18 above	$ 6,495.91
c. Monthly net income (a. minus b.)	$ 37.93

B6 Declaration (Official Form 6 - Declaration) (12/07)

In re Brandon C. Clark Heidi K. Heffron-Clark Case No. _____
Debtors (If known)

DECLARATION CONCERNING DEBTOR'S SCHEDULES

DECLARATION UNDER PENALTY OF PERJURY BY INDIVIDUAL DEBTOR

I declare under penalty of perjury that I have read the foregoing summary and schedules, consisting of 28 sheets, and that they are true and correct to the best of my knowledge, information and belief.

Date: _____ Signature: s/ Brandon C. Clark
Brandon C. Clark

Date: _____ Signature: s/ Heidi Heffron-Clark
Heidi K. Heffron-Clark
(Joint Debtor, if any)

[If joint case, both spouses must sign]

DECLARATION UNDER PENALTY OF PERJURY ON BEHALF OF CORPORATION OR PARTNERSHIP

(NOT APPLICABLE)

Penalty for making a false statement or concealing property: Fine of up to $500,000 or imprisonment for up to 5 years or both. 18 U.S.C. §§ 152 and 3571.

Form 6 – Statistical Summary (12/07)

United States Bankruptcy Court
Western District of Wisconsin

In re Brandon C. Clark Heidi K. Heffron-Clark Case No. ____
Debtors Chapter 7

STATISTICAL SUMMARY OF CERTAIN LIABILITIES AND RELATED DATA (28 U.S.C. § 159)

If you are an individual debtor whose debts are primarily consumer debts, as defined in § 101(8) of the Bankruptcy Code (11 U.S.C. § 101(8)), filing a case under chapter 7, 11, or 13, you must report all information requested below.

❑ Check this box if you are an individual debtor whose debts are NOT primarily consumer debts. You are not required to report any information here.

This information is for statistical purposes only under 28 U.S.C. § 159.

Summarize the following types of liabilities, as reported in the Schedules, and total them.

Type of Liability	Amount
Domestic Support Obligations (from Schedule E)	$ 0.00
Taxes and Certain Other Debts Owed to Governmental Units (from Schedule E)	$ 0.00

Claims for Death or Personal Injury While Debtor Was Intoxicated (from Schedule E) (whether disputed or undisputed)	$ 0.00
Student Loan Obligations (from Schedule F)	$ 18,976.22
Domestic Support, Separation Agreement, and Divorce Decree Obligations Not Reported on Schedule E.	$ 0.00
Obligations to Pension or Profit-Sharing, and Other Similar Obligations (from Schedule F)	$ 0.00
TOTAL	$ 18,976.22

State the following:

Average Income (from Schedule I, Line 16)	$ 6,533.84
Average Expenses (from Schedule J, Line 18)	$ 6,495.91
Current Monthly Income (from Form 22A Line 12; OR, Form 22B Line 11; OR, Form 22C Line 20)	$ 7,738.67

State the following:

1. Total from Schedule D, "UNSECURED PORTION, IF ANY" column		$ 0.00
2. Total from Schedule E, "AMOUNT ENTITLED TO PRIORITY" column	$ 0.00	
3. Total from Schedule E, "AMOUNT NOT ENTITLED TO PRIORITY, IF ANY" column		$ 0.00

4. Total from Schedule F	[redacted]	$ 311,174.24
5. Total of non-priority unsecured debt (sum of 1, 3, and 4)		$ 311,174.24

B6 Summary (Official Form 6 – Summary) (12/07)

United States Bankruptcy Court
Western District of Wisconsin

In re Brandon C. Clark Heidi K. Heffron-Clark Debtors — Case No. _____ Chapter 7

SUMMARY OF SCHEDULES

Indicate as to each schedule whether that schedule is attached and state the number of pages in each. Report the totals from Schedules A, B, D, E, F, I, and J in the boxes provided. Add the amounts from Schedules A and B to determine the total amount of the debtor's assets. Add the amounts of all claims from Schedules D, E, and F to determine the total amount of the debtor's liabilities. Individual debtors also must complete the "Statistical Summary of Certain Liabilities and Related Data" if they file a case under chapter 7, 11, or 13.

NAME OF SCHEDULE	ATTACHED (YES/NO)	NO. OF SHEETS	ASSETS	LIABILITIES	OTHER
A – Real Property	YES	1	$448,800.00		
B – Personal Property	YES	5	$377,848.90		
C – Property Claimed as Exempt	YES	3			

D – Creditors Holding Secured Claims	YES	1		$383,718.77	
E – Creditors Holding Unsecured Priority Claims (Total of Claims on Schedule E)	YES	2		$ 0.00	
F – Creditors Holding Unsecured Nonpriority Claims	YES	10		$311,174.24	
G – Executory Contracts and Unexpired Leases	YES	1			
H – Codebtors	YES	1			
I – Current Income of Individual Debtor(s)	YES	1			$6,533.84
J – Current Expenditures of Individual Debtor(s)	YES	1			$6,495.91
TOTAL		26	$826,648.90	$694,893.01	

B 8 (Official Form 8)(12/08)

UNITED STATES BANKRUPTCY COURT
Western District of Wisconsin

In re Brandon C. Clark Heidi K. Heffron-Clark Case No. _____
Debtors Chapter 7

CHAPTER 7 INDIVIDUAL DEBTOR'S STATEMENT OF INTENTION

PART A – Debts secured by property of the estate. ***(Part A must be fully completed for EACH debt which is secured by property of the estate. Attach additional pages if necessary.)***

Property No. 1	
Creditor's Name: Evergreen State Bank	Describe Property Securing Debt: 1385 Kaase Road Stoughton, WI 53589 Mortgage recorded April 13, 2005 as Document No. 4041660 with the Dane County Register of Deeds.
Property will be *(check one)*: ❑ Surrendered ☑ Retained If retaining property, I intend to *(check at least one)*: ❑ Redeem the property ☑ Reaffirm the debt ❑ Other. Explain _____ (for example, avoid lien using 11 U.S.C. § 522(f)) Property is *(check one)*: ☑ Claimed as exempt ❑ Not claimed as exempt	

Property No. 2	
Creditor's Name: First Horizon	Describe Property Securing Debt: 1385 Kaase Road Stoughton, WI 53589 Mortgage recorded March 26 2006, as Document No. 4174777 with the Dane County Register of Deeds.
Property will be *(check one)*: ❑ Surrendered ☑ Retained If retaining property, I intend to *(check at least one)*: ❑ Redeem the property ☑ Reaffirm the debt ❑ Other. Explain _____ (for example, avoid lien using 11 U.S.C. § 522(f)) Property is *(check one)*: ☑ Claimed as exempt ❑ Not claimed as exempt	

Property No. 3	
Creditor's Name: M&I Bank	Describe Property Securing Debt: 2007 GMC Yukon XL
Property will be *(check one)*: ❑ Surrendered ☑ Retained If retaining property, I intend to *(check at least one)*: ❑ Redeem the property ☑ Reaffirm the debt ❑ Other. Explain _____ (for example, avoid lien using 11 U.S.C. § 522(f)) Property is *(check one)*: ☑ Claimed as exempt ❑ Not claimed as exempt	

PART B – Person property subject to unexpired leases.
(All three columns of Part B must be completed for each unexpired lease. Attach additional pages if necessary.)

Property No. 1		
Lessor's Name: None	Describe Leased Property:	Lease will be Assumed pursuant to 11 U.S.C. § 365(p)(2): ❑ YES ❑ NO

0 continuation sheets attached *(if any)*

I declare under penalty of perjury that the above indicates my intention as to any property of my estate securing a debt and/or personal property subject to an unexpired lease.

Date: _____

s/ Brandon C. Clark
Brandon C. Clark
Signature of Debtor

s/ Heidi K. Heffron-Clark
Heidi K. Heffron-Clark
Signature of Joint Debtor (if any)

B 203
(12/94)

UNITED STATES BANKRUPTCY COURT
Western District of Wisconsin

In re Brandon C. Clark Heidi K. Heffron-Clark Debtors — Case No. ____ Chapter 7

DISCLOSURE OF COMPENSATION OF ATTORNEY FOR DEBTOR

1. Pursuant to 11 U.S.C. § 329(a) and Bankruptcy Rule 2016(b), I certify that I am the attorney for the above-named debtor(s) and that compensation paid to me within one year before the filing of the petition in bankruptcy, or agreed to be paid to me, for services rendered or to be rendered on behalf of the debtor(s) in contemplation of or in connection with the bankruptcy case is as follows:

For legal services, I have agreed to accept	$ 360 per hour
Prior to the filing of this statement I have received	$ 1,500.00
Balance Due	$

2. The source of compensation paid to me was:
☑ Debtor ☐ Other (specify)

3. The source of compensation to be paid to me is:
☑ Debtor ☐ Other (specify)

4. ☑ I have not agreed to share the above-disclosed compensation with any other person unless they are members and associates of my law firm.
☐ I have agreed to share the above-disclosed compensation with a person or persons who are not

members or associates of my law firm. A copy of the agreement, together with a list of the names of the people sharing in the compensation, is attached.

5. In return for the above-disclosed fee, I have agreed to render legal service for all aspects of the bankruptcy case, including:
   a) Analysis of the debtor's financial situation, and rendering advice to the debtor in determining whether to file a petition in bankruptcy;
   b) Preparation and filing of any petition, schedules, statement of affairs, and plan which may be required;
   c) Representation of the debtor at the meeting of creditors and confirmation hearing, and any adjourned hearings thereof;
   d) Representation of the debtor in adversary proceedings and other contested bankruptcy matters;
   e) [Other provisions as needed]
   None

6. By agreement with the debtor(s) the above disclosed fee does not include the following services:

None

CERTIFICATION

I certify that the foregoing is a complete statement of any agreement or arrangements for payment to me for representation of the debtor(s) in this bankruptcy proceeding.

Dated: _____

s/ Denis P. Bartell

Denis P. Bartell, Bar No. 1014532
DeWitt Ross & Stevens
Attorney for Debtor(s)

B 201A (Form 201A) (12/09)

WARNING: Effective December 1, 2009, the 15-day deadline to file schedules and certain other documents under Bankruptcy Rule 1007(c) is shortened to 14 days. For further information, see note at bottom of page 2.

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WISCONSIN

NOTICE TO CONSUMER DEBTOR(S) UNDER § 342(b) OF THE BANKRUPTCY CODE

In accordance with § 342(b) of the Bankruptcy Code, this notice to individuals with primarily consumer debts: (1) Describes briefly the services available from credit counseling services; (2) Describes briefly the purposes, benefits and costs of the four types of bankruptcy proceedings you may commence; and (3) Informs you about bankruptcy crimes and notifies you that the Attorney General may examine all information you supply in connection with a bankruptcy case.

You are cautioned that bankruptcy law is complicated and not easily described. Thus, you may wish to seek the advice of an attorney to learn of your rights and responsibilities should you decide to file a petition. Court employees cannot give you legal advice.

Notices from the bankruptcy court are sent to the mailing address you list on your bankruptcy petition. In order to ensure that you receive information about events concerning your case, Bankruptcy Rule 4002 requires that you notify the court of any changes in your address. If you are filing a joint case (a single bankruptcy case for two individuals married to each other), and each spouse lists the same mailing address on the bankruptcy petition, you and your spouse will generally re-

ceive a single copy of each notice mailed from the bankruptcy court in a jointly-addressed envelope, unless you file a statement with the court requesting that each spouse receive a separate copy of an notices.

1. Services Available from Credit Counseling Agencies

With limited exceptions, § 109(h) of the Bankruptcy Code requires that all individual debtors who file for bankruptcy relief on or after October 17, 2005, receive a briefing that outlines the available opportunities for credit counseling and provides assistance in performing a budget analysis. The briefing must be given within 180 days before the bankruptcy filing. The briefing may be provided individually or in a group (including briefings conducted by telephone or on the Internet) and must be provided by a nonprofit budget and credit counseling agency approved by the United States trustee or bankruptcy administrator. The clerk of the bankruptcy court has a list that you may consult of the approved budget and credit counseling agencies. Each debtor in a joint case must complete the briefing.

In addition, after filing a bankruptcy case, an individual debtor generally must complete a financial management instructional course before he or she can receive a discharge. The clerk also has a list of approved financial management instructional courses. Each debtor in a joint case must complete the course.

2. The Four Chapters of the Bankruptcy Code Available to Individual Consumer Debtors

Chapter 7: Liquidation ($245 filing fee, $39 administrative fee, $15 trustee surcharge: Total fee $299)

Chapter 7 is designed for debtors in financial difficulty who do not have the ability to pay their existing debts. Debtors whose debts are primarily consumer

debts are subject to a "means test" designed to determine whether the case should be permitted to proceed under chapter 7. If your income is greater than the median income for your state of residence and family size, in some cases, the United States trustee (or bankruptcy administrator), the trustee, or creditors have the right to file a motion requesting that the court dismiss your case under§ 707(b) of the Code. It is up to the court to decide whether the case should be dismissed.

Under chapter 7, you may claim certain of your property as exempt under governing law. A trustee may have the right to take possession of and sell the remaining property that is not exempt and use the sale proceeds to pay your creditors.

The purpose of filing a chapter 7 case is to obtain a discharge of your existing debts. If, however, you are found to have committed certain kinds of improper conduct described in the Bankruptcy Code, the court may deny your discharge and, if it does, the purpose for which you filed the bankruptcy petition will be defeated.

Even if you receive a general discharge, some particular debts are not discharged under the law. Therefore you may still be responsible for most taxes and student loans; debts incurred to pay nondischargeable taxes; domestic support and property settlement obligations; most fines, penalties, forfeitures, and criminal restitution obligations; certain debts which are not properly listed in your bankruptcy papers; and debts for death or personal injury caused by operating a motor vehicle, vessel, or aircraft while intoxicated from alcohol or drugs. Also, if a creditor can prove that a debt arose from fraud. breach of fiduciary duty, or theft, or from a willful and malicious injury, the bankruptcy court may determine that the debt is not discharged.

Chapter 13: Repayment of All or Part of the Debts of an Individual with Regular Income ($235 filing fee, $39 administrative fee: Total fee $274)

Chapter 13 is designed for individuals with regular income who would like to pay all or part of their debts in installments over a period of time. You are only eligible for chapter 13 if your debts do not exceed certain dollar amounts set forth in the Bankruptcy Code.

Under chapter 13, you must file with the court a plan to repay your creditors all or part of the money that you owe them, using your future earnings. The period allowed by the court to repay your debts may be three years or five years, depending upon your income and other factors. The court must approve your plan before it can take effect.

After completing the payments under your plan, your debts are generally discharged except for domestic support obligations; most student loans; certain taxes; most criminal fines and restitution obligations; certain debts which are not properly listed in your bankruptcy papers; certain debts for acts that caused death or personal injury; and certain long term secured obligations.

Chapter 11: Reorganization ($1000 filing fee, $39 administrative fee: Total fee $1039)

Chapter 11 is designed for the reorganization of a business but is also available to consumer debtors. Its provisions are quite complicated, and any decision by an individual to file a chapter 11 petition should be reviewed with an attorney.

Chapter 12: Family Farmer or Fisherman ($200 filing fee, $39 administrative fee: Total fee $239)

Chapter 12 is designed to permit family farmers and fishermen to repay their debts over a period of time from future earnings and is similar to chapter 13. The

eligibility requirements are restrictive, limiting its use to those whose income arises primarily from a family-owned farm or commercial fishing operation.

3. Bankruptcy Crimes and Availability of Bankruptcy Papers to Law Enforcement Officials

A person who knowingly and fraudulently conceals assets or makes a false oath or statement under penalty of perjury, either orally or in writing, in connection with a bankruptcy case is subject to a fine, imprisonment, or both. All information supplied by a debtor in connection with a bankruptcy case is subject to examination by the Attorney General acting through the Office of the United States Trustee, the Office of the United States Attorney, and other components and employees of the Department of Justice.

WARNING: Section 521(a)(1) of the Bankruptcy Code requires that you promptly file detailed information regarding your creditors, assets, liabilities, income, expenses and general financial condition. Your bankruptcy case may be dismissed if this information is not filed with the court within the time deadlines set by the Bankruptcy Code, the Bankruptcy Rules, and the local rules of the court. The documents and the deadlines for filing them are listed on Form B200, which is posted at http://www.uscourts.gov/bkforms/bankruptcy forms.html#procedure.

Many filing deadlines change on December 1, 2009. Of special note, 12 rules that set 15 days to act are amended to require action within 14 days, including Rule 1007(c), filing the initial case papers; Rule 3015(b), filing a chapter 13 plan; Rule 8009(a), filing appellate briefs; and Rules 1019, 1020, 2015, 2015.1, 2016, 4001,4002, 6004, and 6007.

B 201B (Form 201B) (12/09)

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WISCONSIN

In re Brandon C. Clark Heidi K. Heffron-Clark
Debtors

Case No. ____
Chapter 7

CERTIFICATION OF NOTICE TO CONSUMER DEBTOR(S) UNDER § 342(b) OF THE BANKRUPTCY CODE

Certificate of the Debtor

We, the debtors, affirm that we have received and read the attached notice, as required by § 342(b) of the Bankruptcy Code.

Brandon C. Clark
Heidi K. Heffron-Clark
Printed Name(s) of Debtor(s)

Case No. (if known)

X s/ Brandon C. Clark
Brandon C. Clark
Signature of Debtor

X s/ Heidi K. Heffron-Clark
Heidi K. Heffron-Clark
Signature of Joint Debtor

Instructions: Attach a copy of Form B 201A, Notice to Consumer Debtor(s) Under § 342(b) of the Bankruptcy Code.

Use this form to certify that the debtor has received the notice required by 11 U.S.C. § 342(b) only if the certification has NOT been made on the Voluntary Petition, Official Form B1. Exhibit B on page 2 of Form B1 contains a certification by the debtor's attorney that the attorney has given the notice to the debtor. The Declarations made by debtors and bankruptcy petition preparers on page 3 of Form B1 also include this certification.

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WISCONSIN

In re Brandon C. Clark
Heidi K. Heffron-Clark
Debtors.

Case No.

Chapter 13

STATEMENT OF MONTHLY GROSS INCOME

The undersigned certifies the following is the debtor's monthly income:

Income:	Debtor	Joint Debtor
Six months ago	$ 3,501.12	$ 1,019.15
Five months ago	$ 3,149.82	$ 1,341.76
Four months ago	$ 4,093.62	$ 1,190.90
Three months ago	$ 3,116.16	$ 1,243.71
Two months ago	$ 4,998.84	$ 1,380.17
Last month	$ 6,199.87	$ 1,583.68
Income from other sources	$ 0.00	$ 13,633.20
Total gross income for six months preceding filing	$ 25,059.43	$ 21,372.57
Average Monthly Gross Income	$ 4,176.57	$ 3,562.10

Attached are all payment advices received by the undersigned debtor prior to the petition date, we declare under penalty of perjury that we have read the foregoing statement and that it is true and correct to the best of our knowledge, information, and belief.

Dated: _____

s/ Brandon C. Clark
Brandon C. Clark
Debtor

s/ Heidi K. Heffron-Clark
Heidi K. Heffron-Clark
Joint-Debtor

B7 (Official Form 7) (4/10)

UNITED STATES BANKRUPTCY COURT
Western District Of Wisconsin

In re: Brandon C. Clark Heidi K. Heffron-Clark Case No. _____
Debtors (If known)

STATEMENT OF FINANCIAL AFFAIRS

None ❑ 1. Income from employment or operation of a business

State the gross amount of income the debtor has received from employment, trade, or profession, or from operation of the debtor's business, including part-time activities either as an employee or in independent trade or business, from the beginning of this calendar year to the date this case was commenced. State also the gross amounts received during the two years immediately preceding this calendar year. (A debtor that maintains, or has maintained, financial records on the basis of a fiscal rather than a calendar year may report fiscal year income. Identify the beginning and ending dates of the debtor's fiscal year.) If a joint petition is filed, state income for each spouse separately. (Married debtors filing under chapter 12 or chapter 13 must state income of both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

AMOUNT	SOURCE	FISCAL YEAR PERIOD
38,290.00	J.P. Cullen & Sons, Inc. Wage – Brandon	2008
1,281.00	Laz Bistro & Bar, LLC Wage – Heidi	2008
6,064.00	Clark Ventures, Inc. Wage Heidi	2008

1,553.00	CBOCS, Inc. Wage Heidi	2009
48,757.77	J.P. Cullen & Sons, Inc. Wage – Brandon	2009
42,186.25	J.P. Cullen & Sons, Inc. Wage – Brandon	2010
11,758.54	Cracker Barrel Old Country Store – Wage Heidi	2010

None ☐ 2. Income other than from employment or operation of business

State the amount of income received by the debtor other than from employment, trade, profession, operation of the debtor's business during the two years immediately preceding the commencement of this case. Give particulars. If a joint petition is filed, state income for each spouse separately. (Married debtors filing under chapter 12 or chapter 13 must state income for each spouse whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

AMOUNT	SOURCE	FISCAL YEAR PERIOD
12,153.00	2008 federal tax refund	2008
123,000.00	IRA distribution	2008
5,426.00	2008 State tax refund	2008
34,660.00	Annuity	2008
151.00	2009 state tax refund	2009
31,657.00	IRA distribution	2009
29,851.00	Annuity	2009
9,163.00	2009 federal tax refund	2009
324.60	2009 Adjusted Wisconsin state tax refund	2010
20,448.30	Annuity	2010
1,000.00	Early withdraw of IRA	2010

None ❑ 3. Payments to creditors

Complete a. or b., as appropriate, and c.

a. *Individual or joint debtor(s) with primarily consumer debts:* List all payments on loans, installment purchases of goods or services, and other debts to any creditor made within 90 days immediately preceding the commencement of this case unless - the aggregate value of all property that constitutes or is affected by such transfer is less than $600. Indicate with an asterisk (*) any payments that were made to a creditor on account of a domestic support obligation or as part of an alternative repayment schedule under a plan by an approved nonprofit budgeting and credit counseling agency. (Married debtors filing under chapter 12 or chapter 13 must include payments by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR	DATES OF PAYMENTS	AMOUNT PAID	AMOUNT STILL OWING
Evergreen State Bank 207 S. Forrest Street P.O. Box 427 Stoughton, WI 53589-0427	7/28/10 - $1,899.91 9/21/10 - $3,709.35 10/07/10 - $1,809.44	7,418.70	280,025.00
First Horizon P.O. Box 2351 Memphis, TN 38101	7/9/10 - $400.00 7/23/10 - $400.00 9/4/10 - $400.00 10/02/10 - $400.00	1,600.00	84,380.00
M&I Bank P.O. Box 3186 Milwaukee, WI 53201-3186	7/17/10 - $600.00 8/21/10 - $60.00 9/24/10 - $600.00	1,800.00	19,313.00

None ☑ b. *Debtor whose debts are not primarily consumer debts:* List each payment or other transfer to any creditor made within 90 days immediately preceding the commencement of the case unless the aggregate value of all property that constitutes or is affected by such transfer is less than $5,850*. If the debtor is an individual, indicate with an asterisk (*) any payments that were made to a creditor on account of a domestic support obligation or as part of an alternative repayment schedule under a plan by an approved nonprofit budgeting and credit counseling agency. (Married debtors filing under chapter 12 or chapter 13 must include payments and other transfers by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR	DATE(S)OF PAYMENTS/ TRANSFER(S)	AMOUNT PAID OR VALUE OF TRANSFERS	AMOUNT STILL OWING

**Amount subject to adjustment on 4/01/13, and every three years thereafter with respect to cases commenced on or after the date of adjustment.*

None ☑ c. *All debtors:* List all payments made within one year immediately preceding the commencement of this case to or for the benefit of creditors who are or were insiders. (Married debtors filing under chapter 12 or chapter 13 must include payments by either or both spouses whether or not a joint petition is filed. unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR AND RELATIONSHIP TO DEBTOR	DATE OF PAYMENT	AMOUNT PAID	AMOUNT STILL OWING

4. Suits and administrative proceedings, executions, garnishments and attachments

None ☐ a. List all suits and administrative proceedings to which the debtor is or was a party within one year immediately preceding the filing of this bankruptcy case. (Married debtors filing

under chapter 12 or chapter 13 must include information concerning either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

CAPTION OF SUIT AND CASE NUMBER	NATURE OF PROCEEDING	COURT OR AGENCY LOCATION	STATUS OR DISPOSITION
Discover Bank v. Heidi K. Clark 09-CV-3461	Collection	Dane County Circuit Court Madison, WI	Judgment entered
Resul Adili, et al. v. Clark Ventures, Inc., et al. 08-SC-9866	Collection	Dane County Small Claims Court Madison, WI	Judgment entered
Resul Adili, et al. v. Clark Ventures, Inc., et al. 09-SC-1592	Collection	Dane County Small Claims Court Madison, WI	Eviction

None ❑ b. Describe all property that has been attached, garnished or seized under any legal or equitable process within one year immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF PERSON FOR WHOSE BENEFIT PROPERTY WAS SEIZED	DATE OF SEIZURE	DESCRIPTION AND VALUE OF PROPERTY
Discover Card P.O. Box 30943 Salt Lake City, UT 84130-0395	09/09/2010	Weekly garnishment from Heidi Clark of $56.45 for a total of $451.60 Weekly garnishment from Brandon Clark of $178.59 for a total of $892.95
Wisconsin Dept of Revenue	10/01/2010	State levy for sales and use taxes of Clark Ventures, Inc. $3761.00

5. Repossessions foreclosures and returns

None ❑ List all property that has been repossessed by a creditor, sold at a foreclosure sale, transferred through a deed in lieu of foreclosure or returned to the seller, within one year immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR OR SELLOR	DATE OF REPOSSESSION, FORECLOSURE SALE, TRANSFER OR RETURN	DESCRIPTION AND VALUE OF PROPERTY

Evergreen State Bank 207 S. Forrest St. P.O. Box 427 Stoughton, WI 53589-0427	10/19/2010	Mutual Funds pledged as collateral. Value of Property $47,200.32 (See Schedule F)

6. Assignments and receiverships

None ☑ a. Describe any assignment of property for the benefit of creditors made within 120 days immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include any assignment by either or both spouses whether or not a joint petition is filed. unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF ASSIGNEE	DATE OF ASSIGNMENT	TERMS OF ASSIGNMENT OR SETTLEMENT

None ☑ b. List all property which has been in the hands of a custodian, receiver, or court-appointed official within one year if immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition Is not filed.)

NAME AND ADDRESS OF CUSTODIAN	NAME AND ADDRESS OF COURT CASE TITLE & NUMBER	DATE OF ORDER	DESCRIPTION AND VALUE OF PROPERTY

7. Gifts

None ❑ List all gifts or charitable contributions made within one year immediately preceding the commencement of this case except ordinary and usual gifts to family members aggregating less than $200 in value per individual family member and charitable contributions aggregating less than $100 per recipient. (Married debtors filing under chapter 12 or chapter 13 must include gifts or contributions by either or both

spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF PERSON OR ORGANIZATION	RELATIONSHIP TO DEBTOR, IF ANY	DATE OF GIFT	DESCRIPTION AND VALUE OF GIFT
UWF – Athletics Kellner Hall 1400 Monroe Street Madison, WI 53711		04/24/2010	cash donation $250.00

8. Losses

None ☑ List all losses from fire, theft, other casualty or gambling within one year immediately preceding the commencement of this case or since the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include losses by either or both spouses whether or not a joint petition is filed. unless the spouses are separated and a joint petition is not filed.)

DESCRIPTION AND VALUE OF PROPERTY	DESCRIPTION OF CIRCUMSTANCES AND, IF LOSS WAS COVERED IN WHOLE OR IN PART BY INSURANCE, GIVE PARTICULARS	DATE OF LOSS

9. Payments related to debt counseling or bankruptcy

None ☐ List all payments made or property transferred by or on behalf of the debtor to any persons, including attorneys, for consultation concerning debt consolidation, relief under the bankruptcy law or preparation of a· petition in bankruptcy within one year immediately preceding the commencement

of this case.

NAME AND ADDRESS OF PAYEE	DATE OF PAYMENT, NAME OF PAYOR IF OTHER THAN DEBTOR	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY
American Consumer Credit Counseling	09/17/10	$35.00
DeWitt Ross & Stevens S.C. Two E. Mifflin St. Suite 600 Madison, WI 53703	6/8/2010	$1,500

10. Other transfers

None ☑ a. List all other property, other than property transferred in the ordinary course of the business or financial affairs of the debtor, transferred either absolutely or as security within two years Immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include transfers by either or both spouses whether or not a joint petition is filed. unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF TRANSFEREE, RELATIONSHIP TO DEBTOR	DATE	DESCRIBE PROPERTY TRANSFERRED AND VALUE RECEIVED

None ☑ b. List all property transferred by the debtor within ten years immediately preceding the commencement of this case to a self-settled trust or similar device of which the debtor is a beneficiary.

NAME OF TRUST OR OTHER DEVICE	DATE(S)OF TRANSFER(S)	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY OR DEBTOR' INTEREST IN PROPERTY

11. Closed financial accounts

None ☑ List all financial accounts and instruments held in the name of the debtor or for the benefit of the debtor which were closed, sold, or otherwise transferred within one year immediately preceding the commencement of this case. Include checking, savings, or other financial accounts, certificates of deposit, or other instruments; shares and share accounts held in banks, credit unions, pension funds, cooperatives, associations, brokerage houses and other financial institutions. (Married debtors filing under chapter 12 or chapter 13 must include information concerning accounts or instruments held by or for either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF INSTITUTION	TYPE OF ACCOUNT. LAST FOUR DIGITS OF ACCOUNT NUMBER, AND AMOUNT OF FINAL BALANCE	AMOUNT AND DATE OF SALE OR CLOSING

12. Safe deposit boxes

None ☑ List each safe deposit or other box or depository in which the debtor has or had securities, cash, or other valuables within one year immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include boxes or depositories of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF BANK OR OTHER DEPOSITORY	NAMES AND ADDRESSES OF THOSE WITH ACCESS TO BOX OR DEPOSITORY	DESCRIPTION OF CONTENTS	DATE OF TRANSFER OR SURRENDER, IF ANY

13. Setoffs

None ☑ List all setoffs made by any creditor, including a bank. against a debt or deposit of the debtor within 90 days preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR	DATE OF SETOFF	AMOUNT OF SETOFF

14. Property held for another person

None ❑ List all property owned by another person that the debtor holds or controls.

NAME AND ADDRESS OF OWNER	DESCRIPTION AND VALUE OF PROPERTY	LOCATION OF PROPERTY

Clark Ventures, Inc. 1385 Kaase Road Stougton, WI 53589	Restaurant equipment Unknown value	Deer Point Storage 1503 Oak Opening Stoughton, WI 53589
Minor Child (DJC)	Wells Fargo savings account $225.09	Wells Fargo Bank
Minor Child (RCC)	Wells Fargo savings account $728.00	Wells Fargo Bank
Minor Child (JRC)	Wells Fargo savings account $106.00	Wells Fargo Bank

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15. Prior address of debtor

None ☑ If debtor has moved within three years immediately preceding the commencement of this case, list all premises which the debtor occupied during that period and vacated prior to the commencement of this case. If a joint petition is filed. report also any separate address of either spouse.

ADDRESS	NAME USED	DATES OF OCCUPANCY

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16. Spouses and Former Spouses

None ☑ If the debtor resides or resided in a community property state. commonwealth, or territory (including Alaska, Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington, or Wisconsin) within eight years immediately preceding the commencement of the case, identify the name of the debtor's spouse and of any former

spouse who resides or resided with the debtor in the community property state.

NAME

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17. Environmental Information.

For the purpose of this question, the following definitions apply:

"Environmental law" means any federal, state or local statute or regulation regulating pollution, contamination, releases of hazardous or toxic substances, wastes or material into the air, land, soil, surface water, groundwater, or other medium, including, but not limited to, statutes or regulations regulating the cleanup of these substances, wastes, or material.

"Site" means any location, facility, or property as defined under any Environmental Law, whether or not presently or formerly owned or operated by the debtor, including, but not limited to, disposal sites.

"Hazardous Material" means anything defined as a hazardous waste, hazardous substance, toxic substance, hazardous material, pollutant, or contaminant or similar term under an Environmental Law.

None ☑ a. List the name and address of every site for which the debtor has received notice in writing by a governmental unit that it may be liable or potentially liable under or in violation of an Environmental Law. Indicate the governmental unit, the date of the notice, and, if known, the Environmental Law.

SITE NAME AND ADDRESS	NAME AND ADDRESS OF GOVERNMENTAL UNIT	DATE OF NOTICE	ENVIRONMENTAL LAW

None ☑ b. List the name and address of every site for which the debtor provided notice to a governmental unit of a release of Hazardous Material. Indicate the governmental unit to which the notice was sent and the date of the notice.

SITE NAME AND ADDRESS	NAME AND ADDRESS OF GOVERNMENTAL UNIT	DATE OF NOTICE	ENVIRONMENTAL LAW

None ☑ c. List all judicial or administrative proceedings, including settlements or orders, under any Environmental Law with respect to which the debtor is or was a party. Indicate the name and address of the governmental unit that is or was a party to the proceeding, and the docket number.

NAME AND ADDRESS OF GOVERNMENTAL UNIT	DOCKET NUMBER	STATUS OR DISPOSITION

18. Nature, location and name of business

None ❑ a. *If the debtor is an individual,* list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was an officer, director, partner, or managing executive of a corporation, partner in a partnership, sole proprietor, or was self-employed in a trade, profession, or other activity either full- or part-time within the six years immediately preceding the commencement of this case, or in which the debtor owned 5 percent or more of the voting or equity securities within the six years immediately preceding the commencement of this case.

If the debtor is a *partnership,* list the names. addresses. taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was a partner or owned 5 percent or more of the voting or equity securities, within the six years immediately preceding the commencement of this case.

If the debtor is a corporation, list the names. addresses, taxpayer identification numbers, nature of the business, and beginning and ending dates of all businesses in which the debtor was a partner or owned 5 percent or more of the voting or equity securities within the six years immediately preceding the commencement of this case.

NAME Clark Ventures, Inc., d/b/a St. Louis Pizza

LAST FOUR DIGITS OF SOCIAL SECURITY OR OTHER INDIVIDUAL TAXPAYER-I.D. NO. (ITIN)/COMPLETE EIN 26-0424338

ADDRESS 1385 Kaase Road, Stoughton, WI 53589

NATURE OF BUSINESS Restaurant

BEGINNING AND ENDING DATES 05/10/2007 04/01/2009

None ☑ b. Identify any business listed in response to subdivision a., above, that is "single asset real estate" as defined in 11 U.S.C. § 101.

NAME ADDRESS

---

19. Books, records and financial statements

None ☐ a. List all bookkeepers and accountants who within two years immediately preceding the filing of this bankruptcy case kept or supervised the keeping of books of account and records of the debtor.

NAME AND ADDRESS	DATES SERVICES RENDERED
Tom Schlosser Home Town Tax & Financial 110 Enterprise Drive Verona, WI	Annual personal and business taxes

None ☑ b. List all firms or individuals who within two years immediately preceding the filing of this bankruptcy case have audited the books of account and records, or prepared a financial statement of the debtor.

NAME	ADDRESS	DATES SERVICES RENDERED

None ☑ c. List all firms or individuals who at the time of the commencement of this case were in possession of the books of account and records of the debtor. If any of the books of account and records are not available, explain.

NAME	ADDRESS

None ☑ d. List all financial institutions, creditors and other parties, including mercantile and trade agencies, to whom a financial statement was issued by the debtor within two years immediately preceding the commencement of this case.

NAME AND ADDRESS	DATES ISSUED

20. Inventories

None ☑ a. List the dates of the last two inventories taken of your property, the name of the person who supervised the taking of each inventory, and the dollar amount and basis of each inventory.

DATE OF INVENTORY	INVENTORY SUPERVISOR	DOLLAR AMOUNT OF INVENTORY (Specify cost, market or other basis)

None ☑ b. List the name and address of the person having possession of the records of each of the inventories reported in a., above.

DATE OF INVENTORY	NAME AND ADDRESSES OF CUSTODIAN OF INVENTORY RECORDS

21. Current Partners, Officers, Directors and Shareholders

None ☑ a. If the debtor is a partnership, list the nature and percentage of partnership interest of each member of the partnership.

NAME AND ADDRESS	NATURE OF INTEREST	PERCENTAGE OF INTEREST

None ☑ b. If the debtor is a corporation, list all officers and directors of the corporation, and each stockholder who directly or indirectly owns, controls, or holds 5 percent or more of the voting or equity securities of the corporation.

NAME AND ADDRESS	TITLE	NATURE AND PERCENTAGE OF STOCK OWNERSHIP

22. Former partners, officers, directors and shareholders

None ☑ a. If the debtor is a partnership, list each member who withdrew from the partnership within one year immediately preceding the commencement of this case.

NAME	ADDRESS	DATE OF WITHDRAWAL

None ☑ b. If the debtor is a corporation, list all officers or directors whose relationship with the corporation terminated within one year immediately preceding the commencement of this case.

NAME AND ADDRESS	TITLE	DATE OF TERMINATION

23. Withdrawals from a partnership or distributions by a corporation

None ☑ If the debtor is a partnership or corporation, list all withdrawals or distributions credited or given to an insider. Including compensation in any form, bonuses, loans, stock redemptions, options exercised and any other perquisite during

one year immediately preceding the commencement of this case.

NAME & ADDRESS OF RECIPIENT, RELATIONSHIP TO DEBTOR	DATE AND PURPOSE OF WITHDRAWAL	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY

24. Tax Consolidation Group.

None ☑ If the debtor is a corporation, list the name and federal taxpayer identification number of the parent corporation of any consolidated group for tax purposes of which the debtor has been a member at any time within six years immediately preceding the commencement of the case.

NAME OF PARENT CORPORATION	TAXPAYER IDENTIFICATION NUMBER (EIN)

25. Pension Funds.

None ☑ If the debtor is not an individual, list the name and federal taxpayer identification number of any pension fund to which the debtor, as an employer, has been responsible for contributing at any time within six years immediately preceding the commencement of the case.

NAME OF PENSION FUND	TAXPAYER IDENTIFICATION NUMBER (EIN)

* * * * * *

[If completed by an individual or individual and spouse]

I declare under penalty of perjury that I have read the answers contained in the foregoing statement of finan-

cial affairs and any attachments and that they are true and correct.

Date _____	Signature Of Debtor	s/ Brandon C. Clark Brandon C. Clark
Date _____	Signature Of Joint Debtor (if any)	s/ Heidi K. Heffron-Clark Heidi K. Heffron-Clark

Direct TV
c/o Allied Interstate
P.O. Box 361477
Columbus, OH 43236

Alliant Energy
P.O. Box 3068
Cedar Rapids, IA 52406-3068

American Marketing & Publishing
c/o Rauch-Milliken Intern'l, Inc.
P.O. Box 8390
Metairie, LA 70011-8390

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Madison, WI 53703-3095

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Madison, WI 53708-8280

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P.O. Box 1767
Madison, WI 53701-1767

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Friedman Law Firm
30 W. Mifflin Street, #1001
Madison, WI 53703-2591

Atty. James F. Guckenberg
Kohn Law Firm
312 E. Wisconsin Ave., Ste 501
Milwaukee, WI 53202-4305

Badger Fire Protection
918 Jonathan Dr.
Madison, WI 53713

Bank of America
P.O. Box 15026
Wilmington, DE 19850-5026

Capital Newspapers
1901 Fish Hatchery Road
Madison, WI 53708-0080

CCS, Inc.
P.O. Box 22630
Cleveland, OH 44122-0630

Chase Card Services
P.O. Box 94014
Palatine, IL 60094-4014

City of Stoughton
381 East Main Street
Stoughton, WI 53589

Commercial Air, Inc.
P.O. Box 8367
Madison, WI 53708

Deer Point Storage
1503 Oak Opening
Stoughton, WI 53589

Direct Loan Servicing
U.S. Dept. of Education
P.O. Box 5609
Greenville, TX 75403-5609

Discover Card
P.O. Box 30943
Salt Lake City, UT 84130-0395

Evergreen State Bank
207 S. Forrest Street
P.O. Box 427
Stoughton, WI 53589-0427

FIA Card Services, N.A.
P.O. Box 15137
Wilmington, DE 19850-5137

First Horizon
P.O. Box 2351
Memphis, TN 38101

H.E. Stark Agency, Inc.
P.O. Box 45710
Madison, WI 53744-5710

Historic Stoughton Business Allianc
P.O. box 123
Stoughton, WI 53589

Home Pages Directories
P.O. Box 982
DeKalb, IL 60115

IMS
16901 West Glendale Drive
New Berlin, WI 53151

Internal Revenue Service
P.O. Box 21126
Philadelphia, PA 19114

Just in Time, LLC
2210 Harrison Ave.
Rockford, IL 61104

Key Financial Services, LLC
P.O. Box 6216
Madison, WI 53716-0216

M&I Bank
P.O. Box 3186
Milwaukee, WI 53201-3186

Matthew T. Roethe
Roethe Krohn Pope, LLC
24 N. Henry Street
Edgerton, WI 53534

Midwest Family Broadcasting
730 Rayovac Drive
Madison, WI 53711

Pamela Pesek
McCarthy, Burgess & Wolff
26000 Cannon Road
Cleveland, OH 44146

Penncro Associates, Inc.
P.O. Box 538
Oaks, PA 19456

Peterson Pest Management
1031 Flint Road
Stoughton, WI 53539

Pitney Bowes
c/o Credt Management Corp
P.O. Box 1396
Madison, CT 06443-1396

Quill Corporation
c/o CCS, Inc.
P.O. Box 22630
Cleveland, OH 44122

Retail Data Systems of WI
1900 Pewaukee Rd., Suite M
Waukesha, WI 53188

Rusl Adili, d/b/a Kegonsa Plaza
778 Hwy MM
Oregon, WI 53575

Sheldon Plumbing
408 S. Nine Mound Rd., Suite A
Verona, WI 53593

Society Insurance
P.O. Box 1029
Fond du Lac, WI 54936

St. Mary's Hospital
700 Park Sreet
Madison, WI 53715

Stumps.com
Dept. 0398
P.O. Box 120398
Dallas, TX 75312-0398

Sunrise Credit Services, Inc.
P.O. Box 9100
Farmington, NY 11735-9100

Sysco Food Services
910 S. Boulevard
Baraboo, WI 53913-2793

TDS Metrocom
P.O. Box 94510
Paletine, IL 60094-4510

Telegraph Herald
801 Bluff Street
P.O. Box 688
Dubuque, IA 52004-0688

TigerTranz
4200 Regent Street, Suite 200
Columbus, OH 43219-6229

Transworld Systems
P.O. Box 1864
Santa Rosa, CA 95402

Unified Newspaper Group
133 Enterprise Drive
P.O. Box 930427
Verona, WI 53593

Waste Management of WI
WI32 N10487 Grant Drive
Germantown, WI 53022

Wells Fargo
911 W. Main Street
Stougton, WI 53589

West Asset Management
7171 Mercy Road
Omaha, NE 68106

Wisconsin Department of Revenue
Special Procedures
P.O. Box 8901
Madison, WI 53708-2901

Wisconsin Distributors
900 Progress Way
Sun Prairie, WI 53590

Yellowbook
6300 C Street
Cedar Rapids, IA 52404-7470

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WISCONSIN

In re: Brandon C. Clark Heidi K. Heffron-Clark
Debtors

Case No. _____
Chapter 7_____

VERIFICATION OF CREDITOR MATRIX

The above named debtor(s), or debtor's attorney if applicable, do hereby certify under penalty of perjury that the attached Master Mailing List of creditors, consisting of 7 sheet(s) is complete, correct and consistent with the debtor's schedules pursuant to Local Bankruptcy Rules and I/we assume all responsibility for errors and omissions.

Dated: _____ Signed: s/ Brandon C. Clark
Brandon C. Clark

Dated: _____ Signed: s/ Heidi K. Heffron-Clark
Heidi K. Heffron-Clark

Signed: s/ Denis P. Bartell
Denis P. Bartell
Attorney for Debtor(s)
Bar No.: 1014532
DeWitt Ross & Stevens
2 East Mifflin Street
Suite 600
Madison, WI 53703
Telephone No.: 608-255-8891
Fax No.:
E-mail address: dpb@dewittross.com

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WISCONSIN

No. 10-18035

In Re: BRANDON C. CLARK, HEIDI K. HEFFRON-CLARK

AMENDED SCHEDULES B and C

Debtors, Brandon Clark and Heidi K. Heffron-Clark, hereby amend Schedule B. 12. to correct the entry relating to their Pershing Beneficiary IRA account. The account number ends in "0132" (rather than "7132"). Debtors further amend Schedule C to exempt said Pershing Beneficiary IRA, account ending 0132 under 11 U.S.C. § 522(b)(3)(C) in said same amount as originally scheduled. Said account had previously been claimed exempt under WSA § 815.18(3)(j).

DECLARATION

We declare under penalty of perjury that we have read the foregoing amendment to Schedules B and C, and that it is true and correct to the best of our knowledge, information and belief.

s/ Brandon Clark	1/10/2011
Brandon Clark	Date
s/ Heidi Heffron-Clark	1/10/2011
Heidi Heffron-Clark	Date

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WISCONSIN

No. 10-18035

IN THE MATTER OF:

BRANDON C. CLARK & HEIDI K. HEFFRON-CLARK, Debtors.

JOINT STATEMENT OF FACTS

The Trustee, William J. Rameker ("Trustee"), the Debtors, Brandon C. Clark and Heidi K. Heffron-Clark ("Debtors"), creditors Resul and Zinije Adili, d/b/a Kegonsa Plaza ("Kegonsa Plaza"), each by their respective counsel, hereby submit their Joint Statement of Agreed Facts:

AGREED FACTS

1. On October 29, 2010, the Debtors commenced this case by filing a voluntary petition for relief under Chapter 7 of Title 11 U.S.C., (hereinafter the "Filing Date").

2. The Trustee was appointed as Trustee for the Bankruptcy Estate of the debtors, and has been qualified and so acting at all times since the Filing Date.

3. Kegonsa Plaza is an unsecured judgment creditor of the Debtors.

4. The Trustee and Kegonsa Plaza both filed timely objections to the exemption of the Debtors' inter-

est in a Pershing Beneficiary IRA account ending in 0132 (the "Inherited IRA").

5. On August 10, 2000, Ruth A. Heffron established an Individual Retirement Account (No. 3CG-101851) with O N Equity Sales Company, designating her daughter, debtor Heidi K. Heffron, as sole primary beneficiary. A copy of the applicable IRA Adoption Agreement is attached hereto, designated Exhibit A, and incorporated herein.

6. On September 19, 2001, Ruth A. Heffron Died.

7. On November 28, 2001, Heidi K. Heffron established a Beneficiary Individual Retirement Account (No. 3CG-130132) with O N Equity Sales Company, and on December 4, 2001 caused the funds in her deceased mother's IRA account to be distributed to said Beneficiary IRA. Copies of the IRA Adoption Agreement and the IRA Distribution Request are attached hereto as Exhibits B and C, and are incorporated herein.

8. The Parties agree to provide the Court with the value of the Inherited IRA as of the Filing Date at a later time if such determination becomes necessary.

AGREED FACTS, THE MATERIALITY OF WHICH IS CONTESTED

9. Since January 2002 Heidi K. Heffron-Clark has received monthly distributions and has made cash withdrawals from the Inherited IRA.

10. On January 12, 2011, the Debtors amended their Schedules B and C to exempt Inherited IRA pursuant to 11 U.S.C. § 522(b)(3)(C).

11. The IRA Monthly statement for the period ending April 26, 2002 indicates that the 2001 year-end fair market value of the account was $453,471.06.

12. Between the Filing date and January 31, 2011, Heidi K. Heffron Clark made withdrawals from the Inherited IRA totaling $16,425.00 before tax, as follows:

a. October 29, 2010: $1,500.00;

b. November 12, 2010: $10,500;

c. November 29, 2010: $1,425;

d. December 29, 2010: $1,500;

e. January 31, 2011: $1,500.

CONTESTED FACTS

13. The Parties agree that there are no contested facts at this time.

14. The Parties agree to reserve any objections as to the relevancy or materiality of any of the foregoing facts.

Dated this 1st day of March, 2011.

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Attorneys for Attorney for Resul and Zinije Adili d/b/a/ Kegonsa Plaza

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(608) 255-8891

THIS ORDER IS SIGNED AND ENTERED.

[SEAL]

Dated: June 13, 2011 _____

Hon. Robert D. Martin
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WISCONSIN

Case No. 10-18035

In re:

BRANDON C. CLARK and HEIDI K. HEFFRON-CLARK, Debtors.

ORDER APPROVING STIPULATION FOR STAY OF ORDER PENDING APPEAL

Upon the motion (the "Motion") for approval of the stipulation for a stay of this Court's Decision and Order Sustaining Trustee and Judgment Creditors' Objections to the Debtors' Claimed Exemption of their Inherited IRA (the "IRA") and Disallowing the Debtors' Exemption of their Inherited IRA (the "Order"); and the Court having reviewed the Motion and having determined that the relief described in the Motion is in the best interest of the Debtors' estates; and good and sufficient cause appearing therefore; it is hereby

ORDERED, ADJUDGED AND DECREED that:

1. Enforcement of the Order shall be stayed until such time as a final decision has been reached by any court hearing this matter and the time for appealing such decision has expired or the next highest level of appellate court has denied review.

2. No party may make any withdrawal from the IRA, other than any mandatory withdrawals required to protect the status of the IRA under the Internal Revenue Code.

3. To the extent that mandatory withdrawals are made, such withdrawals shall be deposited into a trust account maintained by the Trustee, which funds shall not be distributed to any party during the period of the stay of the Order.

4. The Parties shall, within 14 days after the entry this order, execute and send a letter to the O N Equity Sales Company ("O N Equity"), the entity currently holding the IRA funds, directing O N Equity to direct all payments referenced in paragraph 3 herein directly to the Trustee's trust account and payable made to "William J. Rameker, Trustee for Clark".

# # #

PETITIONER'S BRIEF

PRINTED
AND
FILED

JAN 13 2014

No. 13-299

In the Supreme Court of the United States

BRANDON C. CLARK AND HEIDI K. HEFFRON-CLARK,
PETITIONERS

v.

WILLIAM J. RAMEKER, TRUSTEE, ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

BRIEF FOR THE PETITIONERS

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DEWITT ROSS
& STEVENS S.C.
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Law Library

* Admitted in Virginia and practicing law in the District of Columbia pending application for admission to the D.C. Bar under the supervision of bar members pursuant to D.C. Court of Appeals Rule 49(c)(8).

QUESTION PRESENTED

Whether an individual retirement account that a debtor has inherited is exempt from the debtor's bankruptcy estate under Section 522 of the Bankruptcy Code, 11 U.S.C. 522, which exempts "retirement funds to the extent that those funds are in a fund or account that is exempt from taxation" under certain provisions of the Internal Revenue Code.

PARTIES TO THE PROCEEDING

Petitioners are Brandon C. Clark and Heidi K. Heffron-Clark. Respondents are William J. Rameker, Trustee, and Resul Adili and Zinije Adili, d/b/a Kegonsa Plaza.

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In the Supreme Court of the United States

No. 13-299

BRANDON C. CLARK AND HEIDI K. HEFFRON-CLARK,
PETITIONERS

v.

WILLIAM J. RAMEKER, TRUSTEE, ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

BRIEF FOR THE PETITIONERS

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-7a) is reported at 714 F.3d 559. The opinion of the district court (Pet. App. 9a-21a) is reported at 466 B.R. 135. The opinion of the bankruptcy court (Pet. App. 22a-35a) is reported at 450 B.R. 858.

JURISDICTION

The judgment of the court of appeals was entered on April 23, 2013. A petition for rehearing was denied on May 21, 2013 (Pet. App. 8a). On August 2, 2013, Justice Kagan extended the time within which to file a petition for a writ of certiorari to and including September 18, 2013. The petition for a writ of certiorari was filed on

September 6, 2013, and was granted on November 26, 2013. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

STATUTORY PROVISION INVOLVED

Section 522(b)(3)(C) and (d)(12) of Title 11 of the United States Code provides that a debtor may exempt the following property from the bankruptcy estate:

> [R]etirement funds to the extent that those funds are in a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986.

STATEMENT

In Section 522 of the Bankruptcy Code, Congress provided that a debtor may exempt from his bankruptcy estate "retirement funds to the extent that those funds are in a fund or account that is exempt from taxation" under enumerated provisions of the Internal Revenue Code covering a wide range of retirement accounts. An individual retirement account (IRA) is indisputably one of the covered types of tax-exempt accounts. This case presents the question whether the "retirement funds" exemption protects an "inherited" IRA: that is, an IRA that has passed to the debtor upon the death of its initial owner, but retains its tax-exempt status.

Petitioners, a husband and wife, filed a voluntary joint bankruptcy petition under Chapter 7 of the Bankruptcy Code. In the ensuing bankruptcy proceedings, they claimed an exemption for an IRA that had passed to the wife when her mother died. Respondents, the bankruptcy trustee and unsecured creditors, objected to the claimed exemption. The bankruptcy court sustained respondents' objection, Pet. App. 22a-35a, but the district court reversed, *id.* at 9a-21a. The court of appeals then

reversed the district court. *Id.* at 1a-7a. In a decision contrary to every other valid lower-court decision to have considered the issue, the court of appeals held that an inherited IRA does not qualify for the "retirement funds" exemption in Section 522. The court of appeals' holding was incorrect, and its judgment should be reversed.

A. Background

1. "The principal purpose of the Bankruptcy Code is to grant a fresh start to the honest but unfortunate debtor." *Marrama* v. *Citizens Bank*, 549 U.S. 365, 367 (2007) (internal quotation marks and citation omitted). An individual debtor commences a bankruptcy proceeding by filing a voluntary petition, typically under Chapter 7 or Chapter 13 of the Bankruptcy Code; spouses may file jointly. See 11 U.S.C. 301, 302.

Upon the filing of the petition, the debtor's property becomes part of the bankruptcy estate, which consists of assets that are available to pay creditors. See 11 U.S.C. 541(a). Congress has created a variety of exceptions and exemptions from the estate, which reflect its policy judgments about types of property that a debtor should be permitted to retain. Subject in some cases to caps on the amounts, federal law allows a debtor to retain, among other things, his home and furnishings; car; clothing; jewelry; life insurance; social security and other benefits; funds placed in an education savings account; and, of particular relevance here, retirement funds. See 11 U.S.C. 522(d)(1), (2), (3), (4), (7), (8), (10), (12); 11 U.S.C. 541(b)(5), (6), (7). As a result of those provisions, most individual debtors can protect all, or almost all, of their property from creditors. See 1 Henry J. Sommer, *Consumer Bankruptcy Law and Practice* § 2.5.1, at 26 (9th ed. 2009) (Sommer).

This case concerns the "retirement funds" exemption, which is contained in Section 522 of the Bankruptcy Code. Section 522 establishes the regimes by which an individual debtor may claim property as exempt from the bankruptcy estate. A debtor may elect to claim exemptions either under federal law (pursuant to Section 522 (b)(2)) or under state law (pursuant to Section 522(b)(3)). A State may require its citizens to use its own exemption regime, and a majority of the States have done so. See 11 U.S.C. 522(b)(2); 4 Alan N. Resnick & Henry J. Sommer, *Collier on Bankruptcy* § 522.02[1], at 522-16 (16th ed. 2013) (*Collier on Bankruptcy*).

Although Section 522 has long been part of the Bankruptcy Code, Congress added the "retirement funds" exemption less than a decade ago in the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 23 (BAPCPA). Before the enactment of BAPCPA, this Court had held that various types of retirement funds were excluded or exempt from the bankruptcy estate under other provisions of the Bankruptcy Code. In *Patterson* v. *Shumate*, 504 U.S. 753 (1992), the Court held that a debtor could exclude an ERISA-qualified pension plan pursuant to Section 541(c)(2). See *id.* at 757-760, 765-766. And in *Rousey* v. *Jacoway*, 544 U.S. 320 (2005), the Court held that debtors proceeding under the federal exemption regime could exempt their own IRAs pursuant to Section 522(d)(10)(E), which, subject to certain exceptions, exempts "payment[s] under a stock bonus, pension, profit-sharing, annuity, or similar plan or contract on account of * * * age * * * to the extent reasonably necessary for the support of the debtor and any dependent of the debtor." See *Rousey*, 544 U.S. at 326, 334-335.

In enacting the "retirement funds" exemption and related provisions of BAPCPA, Congress sought to "ex-

pand the protection for tax-favored retirement plans or arrangements that may not be already protected under * * * state or Federal law." H.R. Rep. No. 31, 109th Cong., 1st Sess., Pt. I, at 63-64 (2005). Unusually, in order to ensure that retirement funds would be unaffected by bankruptcy "regardless of the State policy on exemptions," *id.* at 43, Congress enacted not only an exemption for debtors who proceed under the federal regime, see 11 U.S.C. 522(d)(12), but also an identically worded exemption, available as a matter of federal law, for debtors who elect (or are required) to proceed under a state regime, see 11 U.S.C. 522(b)(3)(C).

2. In each instance, the "retirement funds" exemption provides that a debtor may exempt from the property of his bankruptcy estate "retirement funds to the extent that those funds are in a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986." 11 U.S.C. 522(b)(3)(C), (d)(12). The list of provisions from the Internal Revenue Code covers all of the most familiar types of tax-exempt retirement plans and accounts—and many less familiar ones.

a. Section 401 of the Internal Revenue Code governs pension, profit-sharing, and stock-bonus plans established and maintained by employers for their employees. See 26 U.S.C. 401(a), (k)(2); 26 C.F.R. 1.401-1(a)(2). Section 401 covers both defined benefit plans, which typically provide benefits determined by a formula based on the employee's earnings history and length of service, and defined contribution plans, which provide benefits based on the amount contributed on behalf of each employee to the plan (and its investment earnings). See 26 U.S.C. 414(i), (j). In particular, Section 401 covers the most common type of employer-provided retirement plan—the "401(k)" plan, which is a defined contribution plan

that allows an employee to contribute a portion of his salary (up to $17,500 in 2014 for most individuals) to an individual account, in addition to any matching contributions made by the employer. See 26 U.S.C. 401(k)(2).

Section 403 exempts employee annuity plans. See 26 U.S.C. 403(a), (b). Under Section 403(a), an employer may create a type of Section 401(a) plan that involves purchasing annuities on behalf of its employees. See 26 U.S.C. 403(a). Under Section 403(b), public schools and certain tax-exempt organizations may establish special retirement plans for their employees; those plans may take the form not only of annuities, but also of custodial accounts with investments in mutual funds (much like 401(k) plans). See 26 U.S.C. 403(b). Both employees and employers may contribute to Section 403(b) plans. See 26 U.S.C. 415(a)(2), (c); 26 C.F.R. 1.403(b)-4(b)(1).

Similarly, Section 457 exempts deferred compensation plans established by state and local governments and certain tax-exempt organizations. See 26 U.S.C. 457(a)(1), (b), (e)(1). Both employees and employers may contribute to Section 457 plans. See 26 C.F.R. 1.457-4(b), (c).[1]

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[1] Two other enumerated provisions in the "retirement funds" exemption, Sections 414 and 501(a), have relatively modest significance here. Section 414 is primarily a definitional section, but it contains two provisions covering specific types of retirement plans: Section 414(h), which permits employees of state and local governments with defined benefit plans to obtain tax deferral for their voluntary contributions, and Section 414(x), which authorizes small employers to establish combined defined benefit and defined contribution plans. See 26 U.S.C. 414(h), (x). Section 501(a) is the provision that actually exempts Section 401 plans from taxation; it also exempts any pension trusts created before June 25, 1959, that are still in existence. See 26 U.S.C. 501(a), (c)(18).

b. Of particular relevance here, Sections 408 and 408A provide exemptions for individual retirement accounts. Section 408 governs "traditional IRAs"; Section 408A governs "Roth IRAs." See 26 U.S.C. 408, 408A. An IRA is simply a personal savings account held at a financial institution; unlike the foregoing types of retirement plans, an individual typically establishes and maintains control over an IRA without the involvement of his employer. See 26 U.S.C. 408(a). An individual may contribute a certain amount to an IRA each year (up to $5,500 in 2014 for most individuals); an individual may also "roll over" funds from another type of retirement plan into an IRA. See 26 U.S.C. 408(a)(1), 408(d)(3), 408A(c)(2), 408A(c)(6).

Both traditional and Roth IRAs are tax-exempt: that is, funds in the IRA grow tax-free as long as they remain there, with no tax payable as a result of any transactions within the IRA. See 26 U.S.C. 408(e)(1), 408A(a). Traditional and Roth IRAs differ, however, in two principal respects. First, contributions to a traditional IRA are generally tax-deductible at the time they are made; taxation occurs only once funds are withdrawn from the account, at which point the funds are taxed as ordinary income. See 26 U.S.C. 25B, 408(d)(1), 408(e)(1); 26 C.F.R. 1.219-1, 1.408-4(a). By contrast, contributions to a Roth IRA are made after tax, and withdrawn funds are usually not subject to taxation. See 26 U.S.C. 408A(c)(1), (d)(1).[2]

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[2] Employees may now make Roth contributions to certain Section 401, 403, and 457 plans, including 401(k) plans; the tax consequences of Roth contributions to those plans essentially track those of Roth IRA contributions. See 26 U.S.C. 402A(a)(1), (b)(1), (e)(1).

Second, different rules govern contributions to, and distributions from, traditional and Roth IRAs. After reaching age 70½, the owner of a traditional IRA may no longer contribute to the account and, one year later, must begin taking annual required minimum distributions from the account (in amounts that are typically determined by dividing the account balance of the IRA by the owner's life expectancy). See 26 U.S.C. 219(d)(1), 401(a)(9), 4973(b); 26 C.F.R. 1.401(a)(9)-5, A-1(a); 26 C.F.R. 1.408-8, A-1(a), A-3. By contrast, the owner of a Roth IRA may continue contributing to the account after reaching age 70½ and is never required to take distributions. See 26 U.S.C. 408A(c)(4), (c)(5).

Owners may withdraw funds for any purpose from both traditional and Roth IRAs after reaching age 59½, regardless of whether the owners have actually retired. See 26 U.S.C. 72(t)(2)(A)(i), 408A(d)(2)(A)(i). Indeed, regardless of age or retirement status, the owner of a Roth IRA may withdraw funds at any time without penalty or taxation, as long as the withdrawals are less than the amount that has been contributed to the account. See 26 U.S.C. 408A(d)(4)(B); 26 C.F.R. 1.408A-6, A-1(b). In addition, subject to amount restrictions, owners of both traditional and Roth IRAs may make withdrawals at any time for certain specified purposes, including withdrawals for medical expenses, see 26 U.S.C. 72(t)(2)(B); for qualified education expenses, see 26 U.S.C. 72(t)(2)(E); and for the purchase of a first home, see 26 U.S.C. 72(t)(2)(F). Other withdrawals are subject to a 10% penalty (and potentially to taxation). See 26 U.S.C. 72(t).

3. This case presents the question whether a so-called "inherited" IRA qualifies for the "retirement funds" exemption in Section 522. The term "inherited" is something of a misnomer, because an interest in an "inherited" IRA is ordinarily not received by inheritance:

the initial owner of an IRA usually must designate a beneficiary at the time the IRA is established, and the IRA passes to that beneficiary upon the owner's death. For statutory purposes, an IRA is considered "inherited" whenever the initial owner dies and the beneficiary acquires an interest in the account as a result. See 26 U.S.C. 408(d)(3)(C)(ii). Once an IRA is "inherited," it is retitled to indicate that the account is for the benefit of the beneficiary. See Rev. Proc. 89-52, § 3.01, 1989-2 C.B. 632. The beneficiary typically transfers the IRA into another IRA with the same characteristics but a new account number; that transfer is known as a "trustee-to-trustee" transfer and is not considered a withdrawal of the funds. See Rev. Rul. 78-406, 1978-2 C.B. 157; I.R.S. Priv. Ltr. Rul. 2003-4303, at 5 (July 31, 2003); Natalie B. Choate, *Life and Death Planning for Retirement Benefits* §§ 4.2.01-4.2.02, at 255-259 (7th ed. 2011) (Choate).

An inherited IRA retains its tax-exempt status, with funds being taxed only upon distribution—or not at all, in the case of a Roth IRA. See 26 U.S.C. 408(d)(3)(C)(ii), 408(e)(1), 408A(a), 408A(d)(1). An inherited IRA differs from an IRA held by its initial owner in two principal respects. First, the beneficiary of an inherited IRA may not contribute additional funds to the IRA or roll it over into another retirement account. See 26 U.S.C. 219 (b)(1)(A), 219(d)(4), 408(a)(1), 408(d)(3)(C); IRS, Publication 590: Individual Retirement Arrangements (IRAs) 18 (2013) (IRS Publication 590).[3]

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[3] When the decedent's spouse is the beneficiary, she may elect to take the IRA as an inherited IRA or to step into the decedent's shoes and become the IRA's owner. A spouse who becomes the IRA's owner may contribute to the IRA or roll it over, as if she had established the account herself. See IRS Publication 590, at 18.

Second, the beneficiary may withdraw funds from the IRA at any time, subject to any applicable tax consequences, and, after one year, is required to take a minimum distribution annually. See IRS Publication 590, at 36-37. Much like the initial owner of a traditional IRA, a beneficiary may take the required minimum distributions gradually over the remainder of her life (in amounts that are typically determined by dividing the account balance by the beneficiary's life expectancy). See 26 U.S.C. 401(a)(9), 408(a)(6); 26 C.F.R. 1.401(a)(9)-5, A-5; 26 C.F.R. 1.408-8, A-1(a); IRS Publication 590, at 36-37, Appx. C.[4] Beneficiaries of other retirement plans with more restrictive distribution rules can take advantage of the extended distribution option for inherited IRAs by rolling over funds from those accounts into an inherited IRA. See 26 U.S.C. 402(c)(11).

B. Facts And Procedural History

1. Petitioners Brandon Clark and Heidi Heffron-Clark are a husband and wife who live in Stoughton, Wisconsin, with their six-year-old son. Heidi's mother had established a traditional IRA, naming Heidi as the sole beneficiary. After Heidi's father passed away at the age of 52, her mother rolled over his IRA into hers. In 2001, Heidi's mother also died, at the age of 56, and her IRA passed to Heidi as the designated beneficiary. Neither of Heidi's parents had begun taking distributions from their IRAs before their deaths, so Heidi received the entirety of their retirement savings. After transfer-

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[4] Should the beneficiary die before withdrawing all of the funds in the IRA, any successor beneficiary must take required minimum distributions on the same schedule as the original beneficiary (based on the original beneficiary's projected life expectancy). See 26 C.F.R. 1.401(a)(9)-4, A-4(c); 26 C.F.R. 1.401(a)(9)-5, A-7(c)(2).

ring the inherited IRA into another IRA naming her as beneficiary, Heidi began taking the required minimum distributions from the account. See J.A. 87, 142.

After their marriage, petitioners opened a pizza parlor in Stoughton. During the recent recession, however, their business failed, and petitioners could no longer meet their debts and their family's living expenses. See J.A. 59-84, 87-92.

2. On October 29, 2010, petitioners filed a voluntary joint bankruptcy petition under Chapter 7 in the Western District of Wisconsin. In the ensuing bankruptcy proceedings, petitioners claimed the "retirement funds" exemption for the IRA that had passed to Heidi when her mother died.[5] At the time of the bankruptcy, the IRA was worth nearly $300,000 and was by far petitioners' most valuable asset aside from their home (which, after taking into account their mortgage, was exempt under state law). See J.A. 29-58.[6]

Respondents, the bankruptcy trustee and unsecured creditors, objected to the claimed exemption. The bankruptcy court sustained respondents' objection. Pet. App. 22a-35a. As is relevant here, the court reasoned that the funds in an inherited IRA do not constitute "retirement funds" within the meaning of Section 522 because they are "not segregated to meet the needs of, nor distributed on the occasion of, any person's retirement." *Id.* at 30a.[7]

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[5] Petitioners, who had opted to use the Wisconsin exemption regime, originally claimed that the IRA was exempt under Wisconsin law but amended their bankruptcy schedules to rely on the federal exemption. See J.A. 140.

[6] According to the most recent available account statement, the IRA is now worth approximately $330,000.

[7] The bankruptcy court stayed its order sustaining the objection pending the completion of all appeals. See J.A. 145-146. Currently,

3. The district court reversed. Pet. App. 9a-21a. The court reasoned that funds set aside in an IRA do not "lose their character" as "retirement funds" when they pass to a beneficiary after the initial owner's death. *Id.* at 18a-21a. Rejecting the bankruptcy court's analysis, the district court concluded that the "retirement funds" exemption "do[es] not distinguish between an account built up by a decedent and inherited by a debtor and an account made up of contributions by the debtor herself." *Id.* at 20a. The court added that an inherited IRA expressly remains exempt from taxation under Section 408, one of the provisions of the Internal Revenue Code enumerated in the exemption. *Ibid.*

In ruling in favor of petitioners, the district court observed that its decision was consistent with every other valid decision to have considered the issue. Pet. App. 16a. After analyzing those decisions, the court concluded that "[the majority's] construction of the applicable statutes is more persuasive" and that "the majority has reached the right result." *Id.* at 21a.

4. The court of appeals reversed, holding that an inherited IRA does not qualify for the "retirement funds" exemption in Section 522. Pet. App. 1a-7a.

As an initial matter, the court of appeals acknowledged that other courts, including the Fifth Circuit, had held that an inherited IRA does qualify for the "retirement funds" exemption. Pet. App. 3a (citing *In re Chilton*, 674 F.3d 486 (5th Cir. 2012)). The court of appeals nevertheless concluded that funds constitute "retirement funds" only if they were set aside for the debtor's own

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the trustee retains possession of the IRA, and the required minimum distributions are being deposited in a trust account maintained by the trustee. See J.A. 146.

retirement: that is, if they are "savings reserved for use after their owners stop working." *Id.* at 7a. The court reasoned that, when Heidi's mother died, the funds in the inherited IRA "became no one's retirement funds," even though they continued to be held in a retirement account and the account "remains a tax-deferral vehicle until the mandatory distribution is completed" (which, according to the court, "precedes the [beneficiary's] retirement"). *Id.* at 4a. The court likened the contents of an inherited IRA to funds withdrawn from the IRA by the initial owner and given to the beneficiary as a cash gift. *Ibid.* Because the beneficiary may withdraw funds from the IRA (and must take minimum distributions), the court concluded that the entire IRA is "a pot of money that can be freely used for current consumption" and so should not be "shelter[ed] from creditors." *Ibid.*

The court of appeals rejected the significance of the fact that an inherited IRA remains an "individual retirement account," contending that "the 'IRA' part of 'inherited IRA' * * * designates the funds' *source*, not the assets' current status." Pet. App. 4a-5a. In the court's view, "an inherited IRA does not have the economic attributes of a retirement vehicle," because of the requirement that the beneficiary take minimum distributions. *Id.* at 5a. The court of appeals was similarly unmoved by the fact that, unlike the other exemptions in Section 522(d), the "retirement funds" exemption does not contain any reference to "the debtor's" interest in, or rights to, the exempted property. *Id.* at 5a-6a. Drawing an analogy to the homestead exemption, the court asserted that Heidi's ability to invoke the "retirement funds" exemption "depend[s] on how [she] use[s] the property, not how her mother used it." *Id.* at 6a.

5. The court of appeals subsequently denied rehearing. Pet. App. 8a.

SUMMARY OF ARGUMENT

Although the statutory and regulatory backdrop to this case is nothing if not complex, the interpretive question that this case presents is actually quite straightforward. The plain language of the "retirement funds" exemption in Section 522 categorically exempts from the bankruptcy estate funds that have been set aside for retirement in one of the enumerated types of tax-exempt retirement plans or accounts. Because the funds contained in an inherited IRA were set aside for retirement when they were deposited in the account, and because an inherited IRA retains its tax-exempt status after it passes to a beneficiary upon the death of its initial owner, an inherited IRA falls within the broad scope of the exemption. In reaching the contrary conclusion, the court of appeals ignored the plain language of the exemption and created an atextual exception for inherited IRAs based on a series of flawed policy arguments.

A. The plain language of the "retirement funds" exemption covers inherited IRAs. Funds in an inherited IRA satisfy the statutory requirement that they be exempt from taxation under one of the enumerated provisions of the Internal Revenue Code. Inherited IRAs retain the hallmark feature of IRAs more generally: funds in an inherited IRA, like an IRA held by its initial owner, grow tax-free and are taxed, if at all, only upon distribution. And to the extent it is properly understood to constitute an additional requirement for exemption, funds in an inherited IRA also constitute "retirement funds," because they were set aside for retirement when they were deposited in the account. As long as the funds remain in the account, they continue to be "retirement funds," even though the account itself has changed hands, and regardless of the beneficiary's intentions for the funds. Far from implicitly carving out inherited IRAs from the

scope of the exemption, the phrase "retirement funds" serves to ensure that only funds that have been set aside in retirement accounts are exempted.

B. In order to overcome the plain language of the exemption, respondents must demonstrate that it would be absurd to interpret the exemption to cover inherited IRAs. But far from being absurd to do so, it is eminently reasonable. Such an interpretation is consistent with several legitimate legislative objectives. Most importantly, such an interpretation furthers Congress's objective in BAPCPA of providing expansive and comprehensive protection for all major types of retirement plans and accounts—an objective that Congress sought to achieve by expressly linking bankruptcy exemption to tax exemption. Such an interpretation also furthers both the specific legislative objective of making inherited IRAs available to beneficiaries as long-term financial planning tools and the broader objective of encouraging individuals to save for retirement. Given those justifications for providing protection in bankruptcy to inherited IRAs, it is hardly surprising that several States have enacted exemptions that contain specific language covering inherited IRAs. And to the extent there is variation in state law on that point, interpreting the "retirement funds" exemption to cover inherited IRAs also furthers Congress's objective of providing a uniform exemption for retirement funds across the federal and state exemption regimes.

C. In the decision below, the court of appeals held that inherited IRAs do not qualify for the "retirement funds" exemption because that exemption covers only funds that have been set aside *for the debtor's own retirement*. But that is not the statute that Congress wrote: the court of appeals' interpretation reads into the statute an additional limitation that is nowhere to be

found in the statutory text. Notably, every other exemption in Section 522(d) contains a specific reference to "the debtor's" interest in, or right to, the property at issue, but the "retirement funds" exemption does not. To the extent the court of appeals offered any textual defense of its interpretation, it did so by misreading a variety of other provisions of Section 522. And the court of appeals' policy arguments in support of its interpretation are founded on a series of fundamental misunderstandings concerning the operation of inherited IRAs: most notably, a failure to appreciate that a beneficiary ordinarily may spread out the required minimum distributions from an inherited IRA over the course of her lifetime, with the result that the beneficiary can draw on at least some of the funds in an inherited IRA for her own retirement if she so chooses. In any event, because it has no basis in the text of the statute, the court of appeals' interpretation should be rejected.

D. To the extent that respondents have offered alternative interpretations of the "retirement funds" exemption, those interpretations are also flawed. Respondents seemingly suggest that "retirement funds" must be funds that *are presently intended to be used* for the debtor's own retirement. But the statute does not contain a further requirement mandating a fact-intensive, case-by-case inquiry into the intended use of the funds after they have been set aside for retirement. Such an inquiry, moreover, would raise the possibility that some funds in the hands of the initial owner of an IRA would not be exempt (but that some funds in the hands of a beneficiary could be). Respondents' apparent suggestion that the exemption covers only funds in an account that possesses the "defining characteristics" of a retirement account fares no better. That limitation likewise cannot be squared with the statutory text, because

the only "defining characteristic" of a retirement account that matters for purposes of the statute is that the account is "exempt from taxation" under one of the enumerated provisions of the Internal Revenue Code.

At bottom, respondents, like the court of appeals, simply disagree with the policy judgment that all retirement funds that have been set aside in a tax-exempt retirement account should be exempt from a debtor's bankruptcy estate. In light of the plain language that Congress actually used, however, that is a matter for Congress to take up in the first instance, not for this Court to implement by judicial amendment. The court of appeals' erroneous interpretation should be corrected and its judgment reversed.

ARGUMENT

INHERITED INDIVIDUAL RETIREMENT ACCOUNTS ARE EXEMPT FROM A DEBTOR'S BANKRUPTCY ESTATE UNDER SECTION 522 OF THE BANKRUPTCY CODE

When faced with questions of statutory interpretation, this Court has stated "time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there." *Connecticut National Bank* v. *Germain*, 503 U.S. 249, 253-254 (1992). In this case, as in so many others, the analysis begins and ends with the statutory language. The plain language of the "retirement funds" exemption in Section 522 sweeps broadly to exempt from the bankruptcy estate funds in every major type of tax-exempt retirement account. This case presents the question whether that categorical exemption encompasses inherited IRAs, a particular species of tax-exempt individual retirement account. In the bankruptcy context, as elsewhere, "when the statute's language is plain, the sole

function of the courts—at least where the disposition required by the text is not absurd—is to enforce it according to its terms." *Lamie* v. *United States Trustee*, 540 U.S. 526, 534 (2004) (citation omitted). The court of appeals erred when it ignored the plain meaning of the "retirement funds" exemption and created an atextual exception to the exemption's broad terms to exclude inherited IRAs.

A. The Plain Text Of The 'Retirement Funds' Exemption Covers Inherited IRAs

Section 522(b)(3)(C) and (d)(12) exempts from the bankruptcy estate "retirement funds to the extent that those funds are in a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986." 11 U.S.C. 522(b)(3)(C), (d)(12). That provision categorically exempts from the estate funds that have been set aside for retirement in one of the enumerated types of tax-exempt retirement plans or accounts. Funds in an inherited IRA unambiguously qualify for exemption under that provision.

1. To begin with, funds in an inherited IRA plainly satisfy the statutory requirement that they be "exempt from taxation under section * * * 408" of the Internal Revenue Code. 11 U.S.C. 522(b)(3)(C), (d)(12). Section 408 exempts from taxation "[a]ny individual retirement account." 26 U.S.C. 408(e)(1).[8] As this Court has repeatedly observed, "the word 'any' has an expansive meaning, that is, 'one or some indiscriminately of whatever kind.'" *United States* v. *Gonzales*, 520 U.S. 1, 5 (1997)

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[8] That exemption applies to traditional and Roth IRAs alike. See 26 U.S.C. 408A(a).

(citation omitted). And Section 408 itself makes clear that an inherited IRA is a species of "individual retirement account." 26 U.S.C. 408(d)(3)(C)(ii); accord 26 U.S.C. 219(d)(4), 402(c)(11)(A). Like IRAs held by their initial owners, therefore, inherited IRAs are "exempt from taxation under section * * * 408" for purposes of the "retirement funds" exemption. See, *e.g.*, *In re Chilton*, 674 F.3d 486, 489-490 (5th Cir. 2012); *In re Hamlin*, 465 B.R. 863, 873 (9th Cir. B.A.P. 2012); *In re Nessa*, 426 B.R. 312, 315 (8th Cir. B.A.P. 2010). As a result, inherited IRAs retain the hallmark feature of IRAs more generally: namely, that funds in the account grow tax-free and are taxed, if at all, only upon distribution. See IRS Publication 590, at 18.

2. To the extent that it is properly understood to constitute an additional requirement for exemption, funds in an inherited IRA constitute "retirement funds" within the meaning of Section 522. Because the Bankruptcy Code does not define the phrase "retirement funds," the Court should "look first to the [words'] ordinary meaning." *Schindler Elevator Corp.* v. *United States ex rel. Kirk*, 131 S. Ct. 1885, 1891 (2011).

In this context, the word "funds" is best understood to mean "sum[s] of money or other resources set aside for a specific purpose." *American Heritage Dictionary of the English Language* 712 (4th ed. 2000); see also, *e.g.*, *Webster's Third New International Dictionary of the English Language Unabridged* 921 (2002) (*Webster's Third*) (defining "fund[s]," *inter alia*, as "sum[s] of money or other resources the principal or interest of which is set apart for a specific objective or activity"). "Retirement," of course, is the "act of retiring or state of being retired"; to "retire" is to "withdraw from office, public station, business, occupation, or active duty." *Webster's Third* 1939. Here, "retirement" is used as an adjective

modifying "funds" and supplies the purpose for which the "funds" have been set aside: "retirement funds" are resources that have been set aside for the day when an individual stops working. See, *e.g.*, *Chilton*, 674 F.3d at 489 (noting that "[t]he plain meaning of the statutory language refers to money that was 'set apart' for retirement").

The contents of an IRA constitute "retirement funds" because they have been set aside for retirement by virtue of being deposited in an individual retirement account. Indeed, the same is true with regard to the contents of all of the other types of retirement plans and accounts enumerated in the "retirement funds" exemption: in each case, an individual or employer earmarks funds for retirement by setting them aside in a tax-exempt plan or account explicitly designated for retirement, whether it be a 401(k) plan, a pension plan, or some other type of covered account. In order to determine whether funds deposited into a tax-exempt account are "retirement funds," one need not conduct a case-by-case inquiry into the subjective motivation of the individual to determine whether he in fact intends to use them after retirement; instead, it is sufficient that the funds have been set aside in an account explicitly designated for retirement.

Once funds have been set aside in a retirement account, moreover, they continue to be "retirement funds" within the meaning of the exemption as long as they remain in such an account. As one lower court put it, "the defining characteristic of 'retirement funds' is the purpose they are 'set apart' for, not what happens after they are 'set apart.'" *Chilton*, 674 F.3d at 489. An example proves the point. The owner of an IRA may withdraw money from his account to use for some non-retirement purpose—for instance, to pay for medical expenses. See,

26 U.S.C. 72(t)(2)(B). That use, however, does not mean that the funds were not "retirement funds" while they were still in the IRA—nor does it mean that, to the extent the owner intends to use remaining funds in the IRA for the same purpose, those funds cease to be "retirement funds."

So too with an inherited IRA. By definition, in the case of an inherited IRA, the initial owner has set aside the funds in question for retirement by depositing them in a retirement account. The owner's death does not in any way affect the funds in the account. And as long as the funds remain in the account, they continue to be "retirement funds" within the meaning of the exemption, even though the account itself has changed hands. While the beneficiary of an inherited IRA may be required to begin taking required minimum distributions earlier than the initial owner of a traditional IRA, both individuals are taking those distributions from the "retirement funds" stored up in the account. Regardless of the beneficiary's intentions for the funds in an inherited IRA, they remain "retirement funds" as long as they remain in the account, where they continue to possess the same tax-exempt status that they had before the death of the initial owner.

Another provision of Section 522 confirms that subsequent events do not affect the characterization of funds in a tax-exempt retirement account as "retirement funds" as long as they remain in the account. Section 522(b)(4)(C) provides that "[a] direct transfer of retirement funds from [a] fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986 * * * shall not cease to qualify for [the 'retirement funds' exemption] by reason of such direct transfer." 11 U.S.C. 522(b)(4)(C). That provision ensures that "retirement

funds" do not lose their status by being moved from one tax-exempt retirement account to another via a "trustee-to-trustee" transfer. Notably, such a transfer is precisely the mechanism that the beneficiary of an inherited IRA typically uses to take possession of a decedent's IRA. See Rev. Rul. 78-406, 1978-2 C.B. 157; I.R.S. Priv. Ltr. Rul. 2003-4303, at 5 (July 31, 2003). As numerous lower courts have concluded, Section 522(b)(4)(C) serves to confirm that the status of funds as "retirement funds" is established at the point at which they have been set aside in a tax-exempt retirement account and is not altered by subsequent events, such as a transfer that occurs upon the death of the owner of the original account. See, *e.g.*, *Chilton*, 674 F.3d at 489; *Hamlin*, 465 B.R. at 873 n.10, 874-875; *Nessa*, 426 B.R. at 315.

3. Respondents have contended that, under the foregoing interpretation, "the 'retirement funds' limitation would do no work." Br. in Opp. 15. It is true that the vast majority of the plans and accounts covered by the enumerated provisions of the Internal Revenue Code in the "retirement funds" exemption are retirement accounts—with the result that funds that have been set aside in those accounts are necessarily "retirement funds."

At least one of the enumerated provisions, however, sweeps more broadly, exempting from taxation a variety of funds unrelated to retirement. See 26 U.S.C. 501(a) (exempting "organization[s] described in subsection (c) or (d) or section 401(a)"); cf., *e.g.*, 26 U.S.C. 419(e)(3)(A) (characterizing certain Section 501(c) organizations as "welfare benefit funds"). While it is questionable whether an *individual* debtor could otherwise claim an exemption for those funds, the phrase "retirement funds" at a minimum serves a clarifying function, stating the purpose of the exemption and ensuring that only funds that

have been set aside in retirement plans and accounts are exempted. In that respect, the inclusion of the phrase "retirement funds" serves to avoid unintended consequences that could ensue if, for example, the statute simply exempted funds contained in accounts covered by the enumerated provisions of the Internal Revenue Code—provisions that are already extraordinarily complex and that could be broadened in unforeseen ways by future amendment.

To be sure, as with many other provisions of the Bankruptcy Code (or, for that matter, the United States Code more generally), Congress's phrasing of the "retirement funds" exemption "may be awkward; yet it is straightforward." *Lamie*, 540 U.S. at 535. Even if Congress could have used different or more economical language, "the mere possibility of clearer phrasing cannot defeat the most natural reading of a statute." *Caraco Pharmaceutical Laboratories, Ltd.* v. *Novo Nordisk A/S*, 132 S. Ct. 1670, 1682 (2012). The unambiguous meaning of the "retirement funds" exemption is that funds that have been set aside for retirement in a tax-exempt retirement plan or account are exempt from the bankruptcy estate.

B. It Is Not Absurd To Interpret The 'Retirement Funds' Exemption To Cover Inherited IRAs

Where, as here, the statutory text is unambiguous, the inquiry is complete unless "the disposition required by the text" would be "absurd." *Lamie*, 540 U.S. at 534 (citation omitted). Absurdity is an exceptionally high standard. An interpretation is not absurd simply because it "may seem odd." *Exxon Mobil Corp.* v. *Allapattah Services, Inc.*, 545 U.S. 546, 565 (2005). And the doctrine of absurdity exists to correct "technical" or "ministerial" errors, not "substantive errors arising from

a drafter's failure to appreciate the effect of certain provisions." Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* § 37, at 238 (2012). Far from being absurd, interpreting the "retirement funds" exemption to cover inherited IRAs is consistent with several legitimate legislative objectives. This is therefore not the "rare" case in which construing a statute according to its plain meaning would "produce a result demonstrably at odds with the intentions of its drafters." *Griffin* v. *Oceanic Contractors, Inc.*, 458 U.S. 564, 571 (1982).

1. a. Most importantly, interpreting the "retirement funds" exemption to cover inherited IRAs furthers one of the objectives stated in the legislative history of BAPCPA: namely, "expand[ing] the protection for tax-favored retirement plans or arrangements that may not be already protected under * * * state or Federal law." H.R. Rep. No. 31, 109th Cong., 1st Sess., Pt. I, at 63-64 (2005). Congress implemented that objective not only by adding the "retirement funds" exemption, but by enacting several other provisions designed to insulate tax-exempt retirement plans and accounts in bankruptcy cases. See, *e.g.*, 11 U.S.C. 362(b)(19), 523(a)(18), 541 (b)(7), 1322(f).

The "retirement funds" exemption replaced the piecemeal protections provided by other exemptions with comprehensive protection for all major types of retirement plans and accounts, thereby eliminating unpredictable case-by-case adjudication about whether or not any given type of account was exempt. In so doing, Congress expressly linked bankruptcy exemption to tax exemption, incorporating provisions of the Internal Revenue Code by reference into the Bankruptcy Code. See 11 U.S.C. 522(b)(3)(C), (d)(12). That linkage is logical, as it creates uniformity across federal law regarding which

types of accounts should be considered retirement accounts subject to special treatment. As the congressionally established National Bankruptcy Review Commission noted when recommending to Congress that "retirement funds in bankruptcy [be exempt] to the extent they are exempt under federal tax laws," such an approach "permits the bankruptcy laws to employ the developed supervision of the Internal Revenue Code to evaluate what kinds of plans and what kinds of contributions are encouraged as a matter of public policy." National Bankruptcy Review Commission, *Bankruptcy: The Next Twenty Years (National Bankruptcy Review Commission Final Report)* § 1.2.5, at 141 (1997).

Notably, Congress hinged bankruptcy exemption for "retirement funds" on tax exemption despite considerable variations in the extent to which individuals could put the funds in different types of retirement plans and accounts to other, non-retirement uses. For example, unlike with other types of accounts, an individual may withdraw funds from an IRA at any time without penalty if those funds are used for qualified education expenses or for the purchase of a first home. See 26 U.S.C. 72(t)(2)(E), (t)(2)(F). Indeed, an individual may withdraw his contributions to a Roth IRA without penalty for any reason at all. See 26 U.S.C. 72(b)(2), 408A(d)(4)(B).[9] Those characteristics, among others, have led commentators to describe IRAs as "all-purpose investment kitties that can be used for purposes that have little connec-

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[9] Because of those characteristics, some investment advisers have argued that Roth IRAs are a better means of paying for college than so-called "529" college savings plans. See, *e.g.*, USA Today, *Is a Roth IRA or 529 Plan Better When Saving for College?* (May 11, 2012) <tinyurl.com/rothira529>.

tion to the holder's retirement." Richard L. Kaplan, *Retirement Funding and the Curious Evolution of Individual Retirement Accounts*, 7 Elder L.J. 283, 285 (1999). Despite the fact that the initial owners of IRAs could put funds in those accounts to non-retirement uses, Congress nevertheless unambiguously exempted funds in those accounts from the bankruptcy estate, along with funds in a wide range of other types of retirement accounts entitled to favorable tax treatment under the Internal Revenue Code.

Exempting inherited IRAs from the bankruptcy estate accords with Congress's intention of providing broad protection in bankruptcy for tax-exempt retirement plans and accounts. The Internal Revenue Code provides that inherited IRAs, like IRAs held by their initial owners, are exempt from taxation. See 26 U.S.C. 408 (d)(3)(C)(ii), (e)(1), 408A(a). And inherited IRAs continue to be governed by the rules applicable to IRAs more generally, subject only to the different rules concerning contributions and distributions explained above. See pp. 9-10, *supra*. It makes sense that these accounts, which are classified by statute as "retirement accounts" and accorded tax-exempt status, come within the same categorical exemption from the bankruptcy estate that Congress extended to IRAs held by their initial owners—and to every other major type of tax-exempt retirement account.

b. Interpreting the "retirement funds" exemption to cover inherited IRAs also furthers a legislative objective embodied in other statutory provisions: namely, making inherited IRAs available to beneficiaries as long-term financial planning tools (and even as a means of funding their own retirements).

Over the last three decades, Congress has enacted significant changes to the Internal Revenue Code that

make inherited IRAs more useful as long-term financial planning tools. Before 1984, if an individual died before beginning distributions from his retirement account, the beneficiary was required to receive the individual's retirement savings either in a lump sum or within a five-year period. See Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. No. 97-248, § 242, 96 Stat. 521 (26 U.S.C. 401(a)(9) (Supp. I 1984)). Under provisions enacted as part of the Deficit Reduction Act of 1984, however, the beneficiary may now elect to receive distributions over her entire life expectancy, subject to certain exceptions, with the result that the beneficiary may draw on at least some of the funds in an inherited IRA for her own retirement. See Pub. L. No. 98-369, § 521(a)(1), (a)(2), 98 Stat. 865-867 (26 U.S.C. 401(a)(9), 408(a)(6)). And shortly after the enactment of BAPCPA, Congress permitted beneficiaries of other types of retirement plans with more restrictive distribution rules to take advantage of the extended distribution option for inherited IRAs by rolling over funds from those accounts into inherited IRAs. See Pension Protection Act of 2006, Pub. L. No. 109-280, § 829(a)(1), 120 Stat. 1001-1002 (26 U.S.C. 402(c)(11)).

As a practical matter, the long-term deferral of taxation and distribution permitted by those statutory provisions can result in substantial growth of the funds in an inherited IRA over time. In fact, if the beneficiary withdraws no more than the annual required minimum distribution, the value of the IRA can actually increase by the time of the beneficiary's own retirement. Take the following example. A 50-year-old beneficiary inherits an IRA worth $1 million. If the beneficiary takes only the minimum distributions and the account grows at an average annual rate of 5%, it will have a value of approximately $1.2 million when she is 65 and approximately

$1.1 million when she is 70. See Audrey Young, *Does Bankruptcy Protection Extend to Inherited IRAs?*, Estate Planning, Nov. 2013, at 6, 8, Ex. 1, Table 2 (Young).

The reason the IRA can grow even into the beneficiary's retirement years is simple: especially in the early years, the annual rate of return outstrips the rate of depletion from the required minimum distribution. See Young 7. In the foregoing example, the required minimum distribution in the first year would be $29,239 ($1 million divided by 34.2, the IRS's projected life expectancy for a 50-year-old). See IRS Publication 590, at 37, App. C. That is approximately 2.9% of the value of the IRA—far lower than even a conservative estimate of the average annual rate of return. In fact, as long as the beneficiary's projected life expectancy is greater than 100 divided by the account's annual growth rate, the IRA will continue to grow even as the required minimum distributions are withdrawn each year. See Choate § 1.5.05, at 73.

The Internal Revenue Code thus allows an IRA to operate similarly in the hands of the beneficiary as in the hands of the initial owner: namely, as a tax-exempt account that can increase in value leading up to its holder's retirement. Exempting inherited IRAs from the bankruptcy estate accords with Congress's intention that those accounts be available to ensure their beneficiaries' long-term financial stability, including as a means of funding their own retirements.

c. As the court of appeals acknowledged, interpreting the "retirement funds" exemption to cover inherited IRAs also serves the government's substantial interest in encouraging individuals to save for retirement. See Pet. App. 6a. That interest, of course, underlies the favorable tax treatment that all of the covered retirement plans and accounts receive. See, *e.g.*, H.R. Rep. No. 807,

93d Cong., 2d Sess. 2 (1974) (stating that the bill that created IRAs "encourages provisions for the retirement needs of many millions of individuals" and "retains the tax incentives granted under present law for the purpose of encouraging the establishment" of retirement plans). Exempting inherited IRAs serves that interest because individuals are more likely to save for retirement if they are secure in the knowledge that their intended beneficiaries will be able to enjoy any funds left over at the time of their death, free from the risk that creditors will be able to access those funds if the beneficiaries go into bankruptcy (as more than a million Americans do every year, see 1 Sommer § 1.1.1, at 1). While it is true, as the court of appeals stated, that "no legislation pursues its purposes at all costs," Pet. App. 6a (citation omitted), the existence of this legislative objective, and the others discussed above, merely underscores that it is not absurd to interpret the "retirement funds" exemption to cover inherited IRAs.

2. Perhaps the best evidence that it is not absurd, but indeed affirmatively reasonable, to exempt inherited IRAs is that, as of this writing, seven States have enacted exemptions that contain specific language covering inherited IRAs. See Alaska Stat. § 09.38.017(a); Ariz. Rev. Stat. § 33-1126(B); Fla. Stat. § 222.21(2)(c); Mo. Stat. § 513.430.1(10)(f); N.C. Gen. Stat. § 1C-1601(a)(9); Ohio Rev. Code § 2329.66(A)(10)(e); Tex. Prop. Code § 42.0021(a).[10] Given that the legislatures in those States

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[10] A court applying the law of an eighth State, Idaho, has held that a statute protecting "any * * * right accrued or accruing to any citizen * * * under any employee benefit plan" covers inherited IRAs. See *In re McClelland*, No. 07-40300, 2008 WL 89901, at *4 (Bankr. D. Idaho Jan. 7, 2008).

have made the policy judgment that inherited IRAs should be exempt from a debtor's bankruptcy estate, it cannot be said that Congress could not reasonably have made the same judgment, such that the broad language that Congress actually used should be ignored.

3. Interpreting the "retirement funds" exemption to cover inherited IRAs also furthers an additional, uniquely federal purpose: namely, to provide a uniform exemption across the federal and state exemption regimes. Although Congress ordinarily affords wide latitude to the States in crafting their own exemption regimes, it took the unusual step in BAPCPA of enacting an identically worded "retirement funds" exemption for debtors who proceed under state regimes, in order to ensure that "retirement funds" would be protected "regardless of the State policy on exemptions." H.R. Rep. No. 31, 109th Cong., 1st Sess., Pt. I, at 43 (2005); see 11 U.S.C. 522 (b)(3)(C).

Reading the "retirement funds" exemption to cover inherited IRAs comports with that statutory objective by providing debtors nationwide uniform protection for their inherited IRAs, regardless of the availability of a corresponding exemption under applicable state law. By contrast, if the federal "retirement funds" exemption were construed to exclude inherited IRAs, a patchwork of conflicting state laws would govern the inquiry in cases proceeding under state regimes: eight States currently provide exemptions for inherited IRAs (either by specific statutory language or by judicial interpretation of less specific language), see p. 29 & n.10, *supra*, and five States (by judicial interpretation) do not, see *In re Greenfield*, 289 B.R. 146, 150 (Bankr. S.D. Cal. 2003); *In re Taylor*, No. 05-93559, 2006 WL 1275400, at *2 (Bankr. C.D. Ill. May 9, 2006); *In re Klipsch*, 435 B.R. 586, 588 (Bankr. S.D. Ind. 2010); *In re Sims*, 241 B.R. 467, 470-

472 (Bankr. N.D. Okla. 1999); *In re Kirchen*, 344 B.R. 908, 912 (Bankr. E.D. Wis. 2006); Pet. App. 34a-35a.

When Congress enacted the "retirement funds" exemption, it was acting against the backdrop of uncertainty about the treatment of inherited IRAs and other types of tax-exempt retirement plans and accounts, and it indisputably intended to provide expanded, comprehensive, and uniform protection for those accounts. It is therefore reasonable to construe the "retirement funds" exemption broadly, consistent with its plain meaning, and to interpret it to cover inherited IRAs.

C. The Court Of Appeals' Contrary Interpretation And Underlying Reasoning Are Deeply Flawed

In the decision below, the court of appeals correctly recognized that the "retirement funds" exemption covers "funds set aside for retirement," Pet. App. 1a; that "[a]n individual retirement account by which a person provides for his or her own retirement meets this requirement," *id.* at 1a-2a; and that, in this case, "the debtor's predecessor in interest had saved [the funds] for retirement," *id.* at 5a. The court of appeals nevertheless held that inherited IRAs do not qualify for the "retirement funds" exemption because that exemption covers only funds that have been set aside *for the debtor's own retirement*. The court reasoned that, once an IRA passes to a beneficiary, the funds in it lose their character as "retirement funds" because "they are not savings reserved for use after their owner[] stop[s] working." *Id.* at 7a; see *id.* at 4a (asserting that, upon the death of the initial owner, the funds in an IRA "bec[o]me no one's retirement funds"). The court of appeals' interpretation simply cannot be reconciled with the plain language of the statute. And with all due respect to the court of ap-

peals, the reasoning on which its interpretation is based is riddled with errors.

1. a. In holding that "retirement funds" must have been set aside for the debtor's own retirement, the court of appeals committed a basic error of statutory interpretation: it read into the statute an additional limitation that is nowhere to be found in the statutory text.[11] That interpretation contravenes the familiar principle that a court should "refrain from reading a phrase into [a] statute when Congress has left it out," *Keene Corp.* v. *United States*, 508 U.S. 200, 208 (1993), and refuse to draw distinctions that do not appear in the statutory text, see *Union Bank* v. *Wolas*, 502 U.S. 151, 162 (1991). That principle is all the more applicable where, as here, Congress has chosen to use broad, categorical language in creating an exemption from the bankruptcy estate. As this Court has observed, "where Congress has intended to provide * * * exceptions to provisions of the Bankruptcy Code, it has done so clearly and expressly." *Travelers Casualty & Surety Co.* v. *Pacific Gas & Electric Co.*, 549 U.S. 443, 453 (2007) (alteration in original; citation omitted).[12]

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[11] To be clear, the additional limitation is that the "retirement funds" must be funds that have been set aside for the debtor's own retirement. That is not necessarily the same as saying that "retirement funds" must be "the debtor's retirement funds"; there is no dispute that, once an IRA passes to the debtor upon the death of its initial owner, the funds themselves are the debtor's. And it is certainly not the same as saying that "retirement funds" must be funds that *are presently intended to be used* for the debtor's own retirement; such an interpretation would also be invalid, albeit for slightly different reasons. See pp. 42-44, *infra*.

[12] As noted in the petition for certiorari, all of the other valid lower-court decisions to have considered the issue have held that inherited IRAs qualify for the "retirement funds" exemption. See Pet.

The flaw in the court of appeals' interpretation is confirmed by the *expressio unius* canon of statutory construction: that is, the presumption that, "[w]here Congress includes particular language in one section of a statute but omits it in another," Congress is "act[ing] intentionally and purposely in the disparate inclusion or exclusion." *Keene*, 508 U.S. at 208 (citation omitted). In Section 522(b)(3)(C) and (d)(12), Congress chose the unqualified phrase "retirement funds" to identify which funds should be exempt; it did not limit that phrase to funds set aside for the debtor's own retirement.

By contrast, Section 522(d) includes eleven other federal exemptions, every single one of which contains a specific reference to "the debtor's" interest in, or right to, the property at issue. For example, Section 522(d)(1) exempts "[t]he debtor's aggregate interest," up to a certain amount, in property that "the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence, or in a burial plot for the

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11-12 (citing cases). Many of those decisions have expressly rejected the interpretation adopted by the court of appeals, reasoning that it "adds [language] to the statute that creates a limitation unintended by Congress and inconsistent with the statute's plain meaning." *In re Weilhammer*, No. 09-15148, 2010 WL 3431465, at *5 (Bankr. S.D. Cal. Aug. 30, 2010); accord, *e.g.*, *Nessa*, 426 B.R. at 314; *Hamlin*, 465 B.R. at 871; *In re Trawick*, 497 B.R. 572, 588 (Bankr. C.D. Cal. 2013); *In re Stephenson*, Civ. No. 11-10848, 2011 WL 6152960, at *3 (E.D. Mich. Dec. 12, 2011); *In re Kalso*, No. 10-72587, 2011 WL 3678326, at *2 (Bankr. E.D. Mich. Aug. 19, 2011); *In re Johnson*, 452 B.R. 804, 808 (Bankr. W.D. Wash. 2011); *In re Mathusa*, 446 B.R. 601, 603 (Bankr. M.D. Fla. 2011); *In re Thiem*, 443 B.R. 832, 843-844 (Bankr. D. Ariz. 2011); *Bierbach* v. *Tabor*, Civ. No. 10-1580, 2010 WL 8914472, at *2 (M.D. Pa. Dec. 2, 2010); *In re Kuchta*, 434 B.R. 837, 844 (Bankr. N.D. Ohio 2010).

debtor or a dependent of the debtor." 11 U.S.C. 522 (d)(1). Similarly, Section 522(d)(3) exempts "[t]he debtor's interest," up to a certain amount, in "household furnishings" and other goods that "are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor." 11 U.S.C. 522(d)(3). The fact that Congress expressly and repeatedly limited the scope of other exemptions in the same section with regard to who uses the property and how, but conspicuously did not so limit the exemption for "retirement funds," strongly counsels against the court of appeals' interpretation. See, *e.g.*, *BFP* v. *Resolution Trust Corp.*, 511 U.S. 531, 537 (1994).

One other statutory provision, moreover, affirmatively illustrates that Congress was capable of placing limitations on the "retirement funds" exemption when it wanted to. At the same time that it enacted the "retirement funds" exemption, Congress imposed a cap of approximately $1.2 million on the aggregate value of assets in IRAs that an individual debtor may claim as exempt. 11 U.S.C. 522(n). Congress further specified that the cap does not apply to certain types of IRAs covered by Section 408: namely, "simplified employee pension[s] under section 408(k) [or] simple retirement account[s] under section 408(p)." *Ibid.* In that provision, therefore, Congress demonstrated its ability not only to impose a limitation on the "retirement funds" exemption, but to define the contours of that limitation with specificity. If Congress wished to impose an additional limitation on the "retirement funds" exemption to funds that have been set aside for the debtor's own retirement, it surely knew how to do so. But because "no such provision exists," the court of appeals erred when it amended the language Congress actually used in order to create one. *Travelers*, 549 U.S. at 453.

b. The court of appeals offered only two glancing responses to the glaring textual flaw with its interpretation. First, the court of appeals asserted that the references in other exemptions to "the debtor's" interest in the property at issue "ha[ve] a temporal effect," because they indicate that "what is exempt is the debtor's [property] when the bankruptcy begins." Pet. App. 5a. As a preliminary matter, that assertion is nonresponsive to the point that the "retirement funds" exemption, unlike all of the other exemptions in Section 522(d), contains no limitation involving the "debtor"—temporal or otherwise. Even if the court of appeals were correct about the meaning of the references in the other exemptions, it would not justify reading language into the "retirement funds" exemption that it does not in fact contain.

In any event, the court of appeals was incorrect, because the references in Section 522(d) to "the debtor's" interest do not establish the point in time at which property is determined to be exempted. Instead, it is Section 541 that imposes such a temporal requirement by providing, subject to certain exceptions, that the estate includes those "legal or equitable interests of the debtor in property *as of the commencement of the case*." 11 U.S.C. 541(a)(1) (emphasis added). Section 522 describes what property a debtor may exempt from property that has already come into the estate by virtue of Section 541. To the extent Section 522 imposes any additional temporal requirements, it does so with language that expressly relates to timing (such as the phrase "immediately before the commencement of the case" in Section 522

(b)(3)(B), see Pet. App. 5a)—not with its references to "the debtor's" interest.[13]

Second, the court of appeals pointed to the homestead exemption as a "parallel situation" that explains why the "retirement funds" exemption should be read to require that the funds have been set aside for the debtor's own retirement. See Pet. App. 5a-6a. But the provision that the court identified as "implement[ing]" the homestead exemption, Section 522(b)(3)(A), does no such thing—and, contrary to the court of appeals' suggestion, it certainly does not impose an affirmative requirement that the debtor live in a home "for the two years before * * * filing" in order to invoke the exemption. Pet. App. 6a. Instead, that provision is effectively a choice-of-law provision for debtors who proceed under state exemption regimes, providing that the applicable exemption is that of the State in which a debtor has lived for the last two years before filing for bankruptcy (or, if the debtor has lived in multiple States, the State in which the debtor has lived for a majority of the last 180 days). See 11 U.S.C. 522(b)(3)(A).

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[13] In support of its assertion that the references in other exemptions to "the debtor's" interest have a temporal effect, the court of appeals suggested that property acquired by a debtor after filing for bankruptcy, such as "new real property" and "new farm tools," would not be protected from creditors, while funds added by an employer to an IRA would be. See Pet. App. 5a. That too is incorrect. As Section 541 itself makes clear, subject to certain exceptions, "[p]roperty acquired postpetition by an individual debtor is usually not property of the estate." 5 *Collier on Bankruptcy* § 541.02, at 541-521. "New real property" or "new farm tools," like other property acquired by the debtor after filing for bankruptcy, would typically not enter the bankruptcy estate in the first place—and would thus be protected from creditors without any need for an exemption.

As noted above, the federal homestead exemption itself, contained in Section 522(d)(1), actually reinforces the idea that Congress uses explicit language when it wishes to impose limitations on the scope of bankruptcy exemptions. For a house to qualify for exemption under Section 522(d)(1), "the debtor or a dependent of the debtor" must "use [it] as a residence." 11 U.S.C. 522 (d)(1). Assuming, *arguendo*, that the court of appeals intended to refer in its analogy to the substantive homestead exemption in Section 522(d)(1), rather than the choice-of-law provision in Section 522(b)(3)(A), its assertion that the availability of the exemption "would depend on how [the debtor] used the property" is correct, because Section 522(d)(1) so requires in clear terms. Pet. App. 6a. But contrary to the court of appeals' conclusion, it is not "[j]ust so with retirement funds," *ibid.*, for the simple reason that the "retirement funds" exemption contains no such limitation.

2. Beyond its feeble textual defense, the court of appeals offered a series of policy arguments in support of its interpretation. Of course, where a statute is "utterly devoid of language that could remotely be thought" to support a proposed interpretation, such policy arguments are irrelevant to the analysis. *Union Bank*, 502 U.S. at 163 (Scalia, J., concurring). In any event, those policy arguments are invalid even on their own terms, because they are premised on a number of fundamental misunderstandings concerning the operation of inherited IRAs.

a. To begin with, the court of appeals asserted that "the 'IRA' part of 'inherited IRA' * * * designates the funds' *source*, not the assets' current status." Pet. App. 4a-5a. That assertion, however, significantly undersells the similarities between IRAs held by their initial owners and inherited IRAs. As discussed above, when funds

set aside in an IRA pass to a beneficiary upon the initial owner's death, the inherited account mirrors the original account in several key respects. Most importantly, it remains an "individual retirement account" for purposes of the Internal Revenue Code. See 26 U.S.C. 408(d)(3)(C)(ii). As a result, the "current status" of the funds is exactly the same as it was before the initial owner's death: as long as they remain in the account, the funds are tax-exempt. See pp. 18-19, *supra*.

b. The court of appeals also mischaracterized what occurs when an IRA passes to a beneficiary upon the death of its initial owner. See Pet. App. 4a. As discussed above, such a transfer is usually effectuated by means of a "trustee-to-trustee" transfer, whereby the IRA is immediately transferred into another IRA with the same characteristics but a new account number. That transfer is not considered a withdrawal of funds and thus does not constitute a taxable event. See Rev. Rul. 78-406, 1978-2 C.B. 157; I.R.S. Priv. Ltr. Rul. 2003-4303, at 5 (July 31, 2003); IRS Publication 590, at 18, 22. And pursuant to Section 522(b)(4)(C), the funds subject to such a transfer "shall not cease to qualify for [the 'retirement funds' exemption] by reason of [the] transfer." 11 U.S.C. 522(b)(4)(C). That provision serves to confirm that funds that were "retirement funds" in an IRA held by its initial owner do not somehow lose their status as a result of the transfer into a different tax-exempt account that occurs upon the owner's death. See pp. 21-22, *supra*.

The court of appeals completely ignored the "trustee-to-trustee" transfer provision. Instead, it compared the transfer of the IRA upon the death of Heidi's mother to a hypothetical situation in which Heidi's mother took money out of the IRA during her life, waited for a month, and then gave the cash to Heidi. See Pet. App. 4a. According to the court of appeals, "[t]he money would have

been 'retirement funds' while in [Heidi's mother's] IRA, but not thereafter," at which point it would be available to creditors. *Ibid.* That is true enough, but the two situations are not even remotely comparable. When funds are withdrawn from an IRA—whether an IRA held by its initial owner or an inherited IRA—they are no longer in one of the enumerated types of tax-exempt retirement plans or accounts. Instead, those funds are subject both to taxation (in the case of a traditional IRA) and to access by creditors. By contrast, when the IRA itself passes to a designated beneficiary, the funds not only have been set aside in a protected tax-exempt retirement account but remain in such an account. The court of appeals' analogy is therefore entirely inapposite.

c. The court of appeals also erred in distinguishing inherited IRAs from IRAs held by their initial owner on the ground that inherited IRAs are "not a place to hold wealth for use after the new owner's retirement." Pet. App. 2a. The court of appeals seemingly rested on the premise that the required minimum distributions to a beneficiary from an inherited IRA are ordinarily completed *before* the beneficiary retires. See Pet. App. 4a (stating that "distribution precedes the [beneficiary's] retirement"); *id.* at 2a (asserting that "payout must be completed in as little as five years"); *id.* at 3a (contending that, "[i]f recipients of inherited IRAs could hold the wealth until their own retirement, tax deferral might become tax exemption"). As discussed above, however, when an IRA passes to a designated beneficiary, the required minimum distributions are typically determined according to the beneficiary's life expectancy—much as they would be for the initial owner of a traditional IRA. See p. 10, *supra*. In the wake of the Deficit Reduction Act of 1984, a five-year payout is required only if the initial owner has not designated a beneficiary and dies be-

fore taking his own required minimum distributions or if the plan itself so provides (in which case the beneficiary could avoid the five-year requirement by transferring the funds to an inherited IRA without that restriction). See 26 U.S.C. 401(a)(9)(B); 26 C.F.R. 1.401(a)(9)-3, A-4.

As a result, contrary to the court of appeals' premise, a beneficiary *can* draw on the funds in an inherited IRA for her own retirement—and can thus take advantage of the benefits of tax exemption not just "immediately after the original owner's death," as the court of appeals asserted, Pet. App. 2a, but for a potentially lengthy period thereafter. Indeed, depending on the beneficiary's age at the time she acquires the inherited IRA, the amount of her withdrawals, and the rate of return on the account's assets, the funds in the account can actually grow substantially over time. See pp. 27-28, *supra*. It is therefore incorrect to say, as the court of appeals did, that inherited IRAs are "not a place to hold wealth for use after the new owner's retirement," Pet. App. 2a; the only real question is how much the beneficiary will have in the IRA at the time of her retirement, assuming she chooses to use it for that purpose.[14]

d. Finally, the court of appeals objected to exempting inherited IRAs on the ground that doing so would

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[14] As noted above, a surviving spouse, who is likely to be close in age to the original owner of the account, has the option either to become the owner of her deceased spouse's IRA or to take it as an inherited IRA. See p. 9 n.3, *supra*. In some circumstances, it makes sense for the spouse to elect the latter option. Under the court of appeals' interpretation, however, a spouse who elects to take her deceased spouse's IRA as an inherited IRA could not claim the inherited IRA as exempt; indeed, it is far from clear whether even a spouse who elects to treat her deceased spouse's IRA as her own could do so.

"shelter from creditors a pot of money that can be freely used for current consumption." Pet. App. 4a. But that reflects a misunderstanding of how Section 522 of the Bankruptcy Code actually operates. The whole point of that section is to "help the debtor obtain a fresh start" by "permit[ting] him to withdraw from the estate certain interests in property" that could otherwise be accessed by creditors. *Rousey*, 544 U.S. at 325.

Consistent with that purpose, Section 522 does "shelter from creditors" a range of assets that "can be freely used for current consumption": for example, debtors can retain jewelry, see 11 U.S.C. 522(d)(4); various income streams such as social security and disability benefits, see 11 U.S.C. 522(d)(10), and (in some cases) up to $12,725 of "any property" at all, see 11 U.S.C. 522(d)(5). The court of appeals' objection could be lodged not only against all of those assets, but also against Roth IRAs—which are indisputably exempt as long as they are in the hands of their initial owners, and from which the owners may freely withdraw funds up to the amount that has been contributed (even for "current consumption"). See 26 U.S.C. 72(b)(2), 408A(d)(4)(B). That policy objection, like the court of appeals' others, is therefore misplaced.

D. Respondents' Alternative Interpretations Are Also Deeply Flawed

Tellingly, in their brief at the certiorari stage, respondents did not directly defend the court of appeals' interpretation: namely, that the "retirement funds" exemption covers only funds that have been set aside *for the debtor's own retirement*. See, *e.g.*, Br. in Opp. 14 (stating that, "*even if* the funds held in an inherited IRA did represent *someone's*, though not the debtor's, retirement funds," they would still not qualify for the exemption (first emphasis added)). In fact, despite engag-

ing in an extended discussion of the merits, respondents did not expressly embrace any particular interpretation, instead seemingly offering two potential alternative ones. Like the court of appeals' interpretation, those interpretations cannot be reconciled with the text of the statute—and are deeply flawed for additional reasons besides.

1. Respondents seemingly suggest that "retirement funds" must be funds that *are presently intended to be used* for the debtor's own retirement. See, *e.g.*, Br. in Opp. 15 (asserting that "[w]hat matters is how the money is being used now"); *id.* at 11 (contending that "retirement funds are resources to be used after one has ceased employment"). But that limitation, like the limitation that the funds must have been set aside for the debtor's own retirement, is nowhere to be found in the statutory text. Although respondents offer exactly the same definitions of the words "retirement" and "funds" that petitioners do, see *id.* at 10-11, they resist the inevitable conclusion that, when those words are put together, "retirement funds" are funds that have been set aside for retirement. The "retirement funds" exemption does not contain a further limitation mandating an inquiry into how the funds are used after they have been set aside in that manner.

Such an inquiry, moreover, would create a host of problematic scenarios, raising the possibility that some funds in the hands of the initial owner would not be exempt (but that some funds in the hands of a beneficiary could be). As discussed above, while the initial owner of an IRA typically places funds in a retirement account with the expectation that he will use them for retirement, the owner may subsequently use the funds for any other purpose, subject only to a penalty in some, but not all, instances if he withdraws the funds before age 59½. See

pp. 25-26, *supra*. Conversely, after the initial owner dies, the beneficiary of the inherited IRA may use at least some of the funds for her own retirement. See pp. 26-28, *supra*.

Two examples prove the point. Suppose a 60-year-old individual who remains employed falls on hard times and begins withdrawing funds from his traditional IRA to pay down his debts. Under respondents' interpretation, assuming the individual intended to deplete his IRA further in that fashion, the remaining funds in the IRA (or at least some of them) would cease to be "retirement funds," because they are not being "used after [the individual] has ceased employment" or "saved for anyone's retirement." Br. in Opp. 11, 15. Conversely, suppose an individual—like Heidi Heffron-Clark—intended to use the funds remaining in an inherited IRA after any pre-retirement distributions for her own retirement. Those funds would qualify as "retirement funds" even under respondents' interpretation, because they are "resources to be used after [the individual] has ceased employment." *Id.* at 11.

It is difficult to see why Congress, as a policy matter, would have wanted the determination of what constitutes "retirement funds" to turn on the debtor's subjective purpose for the funds. In order to establish that purpose, a court would have to engage in a fact-intensive, case-by-case inquiry—an inquiry that would likely require testimony from the debtor and others in order to establish "how the money is being used now." Br. in Opp. 15. And it is impossible to square that approach either with the broad language that Congress actually used or with the categorical approach that Congress plainly contemplated. This Court should therefore reject any interpretation that turns on the debtor's subjective

purpose, and instead construe the exemption to cover all funds that have been set aside in IRAs.

2. In the alternative, respondents seemingly suggest that only funds in an account that possesses the "defining characteristics" of a retirement plan or account should be exempt from the bankruptcy estate. Br. in Opp. 11. Once again, however, that limitation cannot be squared with the statutory text. Only one "defining characteristic" of a retirement account matters for purposes of the "retirement funds" exemption: namely, that the account is "exempt from taxation" under one of the enumerated provisions of the Internal Revenue Code. See 11 U.S.C. 522(b)(3)(C), (d)(12).

As with an intent-based interpretation, moreover, an interpretation that focuses on "defining characteristics" of the account (beyond its tax-exempt status) would raise the possibility that some funds would not be exempt from the bankruptcy estate even in the hands of the initial owner. For example, respondents list as one of the "defining characteristics" of a retirement account that it imposes a penalty on withdrawals before a certain age. See Br. in Opp. 11. As discussed above, however, the owner of a Roth IRA may withdraw his contributions to a Roth IRA without penalty for any reason at all. See p. 25, *supra*. Nor is that feature unique to a Roth IRA: the penalty for withdrawals before a certain age does not apply to individuals who participate in Section 457(b) plans either. See 26 U.S.C. 72(t), 4974(c).

So too with regard to another of respondents' "defining characteristics" of a retirement account: that it requires minimum distributions after a certain age, which, according to respondents, "reflect[s] that funds in [the account] are designed to be used for the owner's retirement." Br. in Opp. 11. Roth IRAs would flunk that requirement as well, because the owner of a Roth IRA is

never required to take distributions (and may even continue contributing to the account after retirement). See 26 U.S.C. 408A(c)(4), (c)(5).

Once again, however, the fundamental problem with respondents' approach is that it is nowhere to be found in the statute. Any type of IRA, whether traditional or Roth, is a tax-exempt account within the meaning of the "retirement funds" exemption. And funds in an IRA, whether held by the initial owner or inherited, are "retirement funds" because they have been set aside for retirement by virtue of being deposited in the account.

* * * * *

At bottom, respondents, like the court of appeals, simply disagree with the policy judgment, reflected in the plain text of the "retirement funds" exemption, that all retirement funds that have been set aside in a tax-exempt retirement account should be exempt from a debtor's bankruptcy estate. But this Court has made clear that it "do[es] not sit to assess the relative merits of different approaches to various bankruptcy problems." *Hartford Underwriters Insurance Co.* v. *Union Planters Bank, N.A.*, 530 U.S. 1, 13 (2000). Particularly in a case such as this, which involves a "complex terrain of interconnected provisions and exceptions," "it is not for [the Court] to rewrite the statute." *Hall* v. *United States*, 132 S. Ct. 1882, 1893 (2012). To the extent that there are countervailing policy reasons to limit the categorical "retirement funds" exemption in the manner the court of appeals proposed, that "is a task for Congress, not the courts." *Hartford*, 530 U.S. at 13-14. Because the "retirement funds" exemption by its terms covers inherited IRAs, this Court should reject the court of appeals' contrary interpretation.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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RESPONDENT'S BRIEF

RECORD AND BRIEFS

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IN THE

Supreme Court of the United States

BRANDON C. CLARK AND HEIDI K. HEFFRON-CLARK,
Petitioners,

v.

WILLIAM J. RAMEKER, TRUSTEE, *et al.*,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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QUESTION PRESENTED

Whether funds held in a non-spousal inherited Individual Retirement Account—which the beneficiary may withdraw at any time without penalty and must withdraw according to a certain timetable without regard to age or retirement status—are "retirement funds" exempt from the claims of the beneficiary's creditors under Section 522 of the Bankruptcy Code, 11 U.S.C. §522(b)(3)(C), (d)(12).

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IN THE

Supreme Court of the United States

No. 13-299

BRANDON C. CLARK AND HEIDI K. HEFFRON-CLARK,
Petitioners,

v.

WILLIAM J. RAMEKER, TRUSTEE, *et al.*,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR RESPONDENTS

INTRODUCTION

This case presents a straightforward question of statutory interpretation: Whether money held in a non-spousal inherited Individual Retirement Account (IRA) is shielded from creditors in bankruptcy under a provision of the Bankruptcy Code exempting "*retirement funds* to the extent that those funds are in a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986." 11 U.S.C. §522(b)(3)(C), (d)(12)

(emphasis added).[1] More specifically, the question presented here is whether funds in a non-spousal inherited IRA are "retirement funds" within the meaning of the Bankruptcy Code. Because the beneficiary of a non-spousal inherited IRA—unlike owners of the other tax-exempt accounts covered by the statute—*may* withdraw all the funds in the account at any time before retirement with no penalty, and *may not* leave the funds in the account until retirement, such an inherited IRA does not contain "retirement funds."[2]

In a preemptive attempt to claim the mantle of textualism, petitioners contend that the "plain language" of the exemption dictates that funds in an inherited IRA are exempt in bankruptcy, and that, to prevail, respondents must demonstrate that such a rule would be absurd. Petitioners' argument might be persuasive if the statute simply exempted "funds in a fund or account that is exempt from taxation" under the specified sections of the Tax Code. Indeed, most of petitioners' brief reads as if that were the case. But it is not. Congress chose to limit the scope of the exemption to "re-

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[1] The full text of 11 U.S.C. §522 appears in the appendix to this brief.

[2] When the beneficiary of a decedent's IRA is a spouse, different rules apply, and the IRA is not considered an "inherited IRA" for purposes of the Tax Code unless the spouse so elects. 26 U.S.C. §408(d)(3)(C)(ii) ("An individual retirement account ... shall be treated as inherited if—(I) the individual for whose benefit the account ... is maintained acquired such account by reason of the death of another individual, and (II) such individual was not the surviving spouse of such other individual."); 26 C.F.R. §1.408-8 (Q&A-5(a)); *infra* pp. 13-14. Unless otherwise specified, this brief uses the term "inherited IRA" in accordance with its definition in the Tax Code to exclude IRAs acquired by surviving spouses.

tirement funds." Petitioners never offer any reason why Congress might have made that choice, if not to limit the exemption to funds that—unlike funds in inherited IRAs—are, and can actually remain, set aside for a debtor's retirement.

Both the exemption's text and its purpose—to ensure that debtors can support themselves in retirement, without unduly thwarting creditors' legitimate claims—mandate that interpretation. By contrast, petitioners' construction, under which money in any of the covered tax-exempt accounts is necessarily "retirement funds," violates perhaps the most basic rule of statutory construction by reading the separate "retirement funds" limitation out of the statute altogether. And, while respondents need not demonstrate that petitioners' interpretation is absurd, petitioners make no serious attempt to argue that shielding from creditors unlimited amounts of money that are freely available for current consumption and cannot be set aside, tax-deferred, for a debtor's retirement is consistent with the exemption's purpose.

Petitioners assume that the only alternative to their interpretation is a case-by-case inquiry into each debtor's subjective intent regarding the use of the funds. Fortunately, that is not so. There is a way to give meaning to all the words that Congress wrote, while at the same time supplying a practical and administrable standard that is faithful to the purposes of the Bankruptcy Code. Properly construed, the "retirement funds" limitation is an objective one, limiting the retirement-funds exemption to funds held in accounts subject to tax treatment demonstrating that Congress intended them to serve as vehicles for retirement savings. Inherited IRAs do not meet that standard. Ra-

ther, they are nothing more than tax-deferred general-purpose savings accounts. Unlike other covered tax-exempt accounts, inherited IRAs permit their beneficiaries to withdraw all the funds at any time before retirement age with no penalty. And unlike any retirement plan of which respondents are aware, an inherited IRA may not be left intact for the beneficiary's retirement. Rather, distributions must begin promptly after the owner's death, regardless of the beneficiary's age or employment status. Funds in inherited IRAs are thus not "retirement funds."

STATEMENT

A. Exemptions In Consumer Bankruptcies

1. The individual debtor provisions of the Bankruptcy Code have a dual purpose: They ensure that a debtor's assets will be apportioned equitably among the debtor's pre-bankruptcy creditors, avoiding the "race to the courthouse" that can occur outside bankruptcy, and grant the honest debtor a fresh start by awarding him or her a discharge of certain pre-bankruptcy debts. *See, e.g.*, *Kokoszka* v. *Belford*, 417 U.S. 642, 645-646 (1974) (interpreting Bankruptcy Act of 1898); *cf. Florida Dep't of Revenue* v. *Piccadilly Cafeterias, Inc.*, 554 U.S. 33, 51 (2008) (Congress did not have "a single purpose in enacting Chapter 11"; rather, "Chapter 11 strikes a balance between a debtor's interest in reorganizing and restructuring its debts and the creditors' interest in maximizing the value of the bankruptcy estate").

Individual debtors or married couples may invoke the Bankruptcy Code's protections by filing a petition for relief. 11 U.S.C. §§109, 301-302. The filing of a bankruptcy petition creates an estate comprised of "all

legal or equitable interests of the debtor in property as of the commencement of the case." *Id.* §541(a)(1). It also initiates an automatic stay barring creditors, subject to certain exceptions, from attempting to recover on pre-petition claims against the debtor or to obtain estate property. *Id.* §362(a).

Petitioners here, like most individual debtors, sought relief under chapter 7. In chapter 7 cases, a trustee is appointed to liquidate the property of the bankruptcy estate and distribute the proceeds to creditors in accordance with the statutory priority scheme. 11 U.S.C. §§701, 704(a)(1), 726. In return, debtors obtain a discharge of certain pre-petition debt. *Id.* §§523, 727.[3] The discharge operates as an injunction that "prohibit[s] creditors from attempting to collect or to recover the debt." *Tennessee Student Assistance Corp.* v. *Hood*, 541 U.S. 440, 447 (2004); *see* 11 U.S.C. §524(a).[4]

Chapter 7 thus reflects a basic bargain: Debtors gain relief from certain pre-petition debt and thereby obtain a fresh start, but only at the price of turning over property that is not necessary to the fresh start to repay their creditors.

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[3] There are certain limitations on debtors' ability to obtain a discharge, 11 U.S.C. §727, and some types of debt are non-dischargeable, *id.* §523(a).

[4] Individual debtors can also file under chapter 13, which provides for "wage-earner" plans, or, less commonly, chapter 11. In chapter 13 cases, the debtor remains in possession of his or her property and proposes a plan under which creditors are repaid out of the debtor's disposable income, typically for a three- or five-year period. 11 U.S.C. §§1306, 1322, 1325. As under chapter 7, the debtor emerges from bankruptcy with a discharge of certain pre-petition debt. *Id.* §1328.

To ensure that individual debtors are not left destitute, the Bankruptcy Code provides that they may exempt certain property from inclusion in the bankruptcy estate, placing those assets beyond the reach of creditors. 11 U.S.C. §522(b); *Rousey* v. *Jacoway*, 544 U.S. 320, 325 (2005). With limited exceptions, "property exempted ... is not liable during or after the case for any debt of the debtor that arose ... before the commencement of the case." 11 U.S.C. §522(c). The exemptions are designed to enable the debtor to provide for his or her basic life necessities and thus obtain the promise of the fresh start, while avoiding becoming a public charge. *See, e.g.*, *United States* v. *Security Indus. Bank*, 459 U.S. 70, 83 (1982) (Blackmun, J., concurring in judgment) (exemption statutes were "enacted to protect the debtor's essential needs"). Because "every asset the Code permits a debtor to withdraw from the estate is an asset that is not available to ... creditors," the exemption scheme reflects a careful balance between the interests of debtors and creditors. *Schwab* v. *Reilly*, 560 U.S. 770, 791-792 (2010).[5]

2. Section 522 of the Bankruptcy Code governs the property an individual debtor may exempt from the

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[5] Petitioners' assertion (at 3) that the exemption provisions permit "most individual debtors [to] protect all, or almost all, of their property from creditors" is potentially misleading. It is true that most chapter 7 debtors have no non-exempt assets. *See* Hynes, *Reorganization as Redemption*, 6 Va. L. & Bus. Rev. 183, 198 (2011). It does not follow, however, that the exemption provisions were designed to permit individual debtors to retain all or nearly all their property. To the contrary, the exemptions are carefully crafted to ensure that debtors can meet their basic needs post-bankruptcy, without "convert[ing] a fresh start into a free pass." *Schwab*, 560 U.S. at 791.

estate. Generally, a debtor may elect either the exemptions available under state and federal non-bankruptcy law or a specific set of federal bankruptcy exemptions laid out in the Bankruptcy Code, unless the debtor's home State has "opted out" of the federal bankruptcy exemptions. 11 U.S.C. §522(b)(2); *Owen* v. *Owen*, 500 U.S. 305, 308 (1991).

Consistent with the exemptions' basic purpose, the federal bankruptcy exemptions permit debtors to retain "certain interests in property," such as the debtor's house, car, or tools of the trade, that are necessary for the debtor's fresh start, "up to certain values." *Rousey*, 544 U.S. at 325. Thus, for example, the federal bankruptcy exemptions permit debtors to retain "[t]he debtor's aggregate interest, not to exceed $22,975 in value, in real property ... that the debtor or a dependent of the debtor uses as a residence," 11 U.S.C. §522(d)(1); "[t]he debtor's interest, not to exceed $3,675 in value, in one motor vehicle," *id.* §522(d)(2); and "[t]he debtor's aggregate interest, not to exceed $2,300 in value, in any implements, professional books, or tools of the trade of the debtor," *id.* §522(d)(6). Certain other narrowly defined categories of property, such as "[p]rofessionally prescribed health aids for the debtor or a dependent of the debtor," *id.* §522(d)(9), may be exempted "in kind," without being subject to a cap on the value that may be exempted, *see Schwab*, 560 U.S. at 782.

The federal bankruptcy exemptions also permit a debtor to retain the right to receive certain income that operates as a substitute for wages that a debtor might otherwise be unable to earn due, for instance, to age, disability, unemployment, or marital status. 11 U.S.C. §522(d)(10), (d)(11); *Rousey*, 544 U.S. at 331. Specifical-

ly, a debtor can exempt his or her right to receive social security or unemployment benefits, 11 U.S.C. §522(d)(10)(A); veterans' benefits, *id.* §522(d)(10)(B); disability benefits, *id.* §522(d)(10)(C); alimony or support payments necessary for the support of the debtor and his or her dependents, *id.* §522(d)(10)(D); and, most relevantly here, payments "under a stock bonus, pension, profitsharing, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor," *id.* §522(d)(10)(E).[6]

In *Rousey*, this Court resolved a division among the courts of appeals by holding that §522(d)(10)(E) permits debtors to exempt funds held in traditional IRAs. The Court reasoned that debtors' right to receive such funds was "on account of ... age" because the right to withdraw funds is restricted by a 10% tax penalty on most withdrawals made before age 59½. *Rousey*, 544 U.S. at 327-328. Moreover, traditional IRAs are "similar" to stock bonus, pension, profit-sharing, and annuity plans because distributions, which must begin at age 70½, are structured to "provide a substitute for wages" in retirement. *Id.* at 329, 331-332.[7]

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[6] Similarly, §522(d)(11) permits debtors to exempt certain wrongful-death awards, life-insurance payments, and compensation for lost future earnings necessary for the support of the debtor and dependents, along with crime victims' reparation awards and certain payments for bodily injury up to a capped amount.

[7] Some retirement plans are not included in the bankruptcy estate at all. The Bankruptcy Code provides that "[a] restriction on the transfer of a beneficial interest of the debtor in a trust that is enforceable under applicable nonbankruptcy law is enforceable"

The uncertainty resolved in *Rousey* prompted Congress to enact the exemption at issue here, which was part of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 23. The provision was under consideration well before *Rousey* and was enacted shortly afterwards. All debtors may invoke the new retirement-funds exemption, whether they elect state or federal exemptions and even if their State has "opted out" of the federal exemption scheme. 11 U.S.C. §522(b)(3)(C). Under the retirement-funds exemption, a debtor may exempt "retirement funds to the extent that those funds are in a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986." *Id.* §522(b)(3)(C), (d)(12).[8]

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in bankruptcy. 11 U.S.C. §541(c)(2). In *Patterson* v. *Shumate*, 504 U.S. 753, 759 (1992), this Court held that §541(c)(2) excludes from the bankruptcy estate the debtor's interest in any plan subject to the requirement of the Employee Retirement Income Security Act (ERISA) that "benefits provided under the plan may not be assigned or alienated." 29 U.S.C. §1056(d)(1); *see Patterson*, 504 U.S. at 759. Section 541(c)(2) does not affect IRAs, which are expressly excluded from ERISA. 29 U.S.C. §1051.

[8] Section 401 covers defined-benefit and defined-contribution stock bonus, pension, and profit-sharing plans established by employers for employees, including 401(k) plans. 26 U.S.C. §401(a). Section 403 covers annuity plans, *id.* §403(a), and plans established by public schools and certain tax-exempt organizations, *id.* §403(b). Section 414 covers certain "combined" plans established by small employers. *Id.* §414(x). Section 457 covers deferred compensation plans established by state and local governments and certain tax-exempt organizations. *Id.* §457. Section 501(a) both exempts §401(a) plans from taxation and covers pension trusts created before June 25, 1959. *Id.* §501(a). As discussed further below, *see*

Consistent with the statutory text's focus on "retirement funds," the accompanying House Report explained that the new exemption was intended to ensure that bankruptcy does not wipe out a debtor's "[r]etirement [s]avings." H.R. Rep. No. 109-31 pt. 1, at 63-64 (2005); *see also* 151 Cong. Rec. S2459, S2462 (Mar. 10, 2005) (statement of Sen. Hatch) ("This bill creates new legal protections for a large class of retirement savings in bankruptcy."). As one congressman put it, the new exemption "upholds the Supreme Court's recent ruling" in *Rousey*, so that "IRAs now join 401(k)s, Social Security, and other benefits tied to age, illness or disability that are afforded protection under bankruptcy law." 151 Cong. Rec. E704 (Apr. 19, 2005) (statement of Rep. Moore).

B. IRAs And Inherited IRAs

1. A traditional IRA "is a personal saving plan" that provides certain "tax advantages for setting aside money for retirement." Internal Revenue Service, *Publication 590: Individual Retirement Arrangements (IRAs)* 3 (Jan. 2014) (Publication 590), *available at* http://www.irs.gov/pub/irs-pdf/p590.pdf. Congress created the IRA as part of the Employee Retirement Income Security Act of 1974 (ERISA), Pub. L. No. 93-406, §2002(b), 88 Stat. 829, 959-961 (codified as amended at 26 U.S.C. §408).

Congress enacted the traditional IRA out of concern for employees unable to participate in qualified retirement plans offered by their employers. ERISA

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infra pp. 10-13, §408 covers traditional IRAs, and §408A covers Roth IRAs.

thus "ma[de] available a special deduction for amounts set aside for retirement by employees who [were] not covered under a qualified plan." H.R. Rep. No. 93-807, at 126 (1974); *see also* Note, *Costs and Consequences of Tax Incentives: The Individual Retirement Account*, 94 Harv. L. Rev. 864, 865 (1981) ("The IRA remedied earlier legislation under which the retirement savings of employees in qualified plans were tax exempt, yet the savings of workers whose employers did not establish qualified plans were not."). Today, as then, contributions to a traditional IRA are tax-deductible, subject to certain limitations, 26 U.S.C. §219(a), and the assets held in a traditional IRA are typically not taxed until they are distributed, *id.* §408(e)(1).

When Congress created the traditional IRA, it imposed a series of restrictions on the account designed to ensure that money placed in the account is used for retirement. Most importantly, although traditional IRA owners retain a nonforfeitable right to the balance held in the account, 26 U.S.C. §408(a)(4), "[t]hat right is restricted by a 10-percent tax penalty that applies"—subject to certain limited exceptions—"to withdrawals from IRAs made before the accountholder turns 59½," *Rousey*, 544 U.S. at 327; *see* 26 U.S.C. §72(t)(1)-(2). Traditional IRA owners can begin to make penalty-free withdrawals after age 59½, but they "must begin to withdraw funds" at age 70½, a time when "they are likely to be retired and lack wage income." *Rousey*, 544 U.S. at 331; *see* 26 U.S.C. §§408(a)(6), 401(a)(9)(A); 26 C.F.R. §1.408-8 (Q&A-3). Failure to take the required minimum distributions results in a 50% excise tax on the amount that should have been distributed. 26 U.S.C. §4974. And traditional IRA owners cannot make tax-deductible contributions to their accounts after age 70½. *Id.* §219(d)(1).

These provisions reflect Congress's objective that money held in a traditional IRA be used as a "substitute for wages" in retirement and not as "mere savings accounts." *Rousey*, 544 U.S. at 329; *see* S. Rep. No. 93-383, at 133 (1973) ("By these provisions the committee hopes to encourage the use of the proceeds of these accounts for retirement purposes."); H.R. Rep No. 93-807, at 138 ("Your committee intends that savings accumulated through an individual retirement account, etc., are to be used for retirement purposes and should not be distributed before the participant reaches age 59½ or is disabled[.]"). In particular, the penalty on premature withdrawals, by "deterr[ing] ... early access to IRAs," *Rousey*, 544 U.S. at 327, furthers Congress's goal that traditional IRAs be used for retirement and not as general funds to be accessed freely for present consumption. *See, e.g.*, *Gee* v. *Commissioner*, 127 T.C. 1, 5 (2006) ("The section 72(t) tax discourages premature IRA distributions that frustrate the intention of saving for retirement."); *Costs and Consequences of Tax Incentives*, 94 Harv. L. Rev. at 867 ("To ensure that IRA[s] are used only for retirement savings, Congress restricts the use and withdrawal of funds in IRA[s] before retirement.").[9]

Roth IRAs, created in 1997, differ in some respects from traditional IRAs, but, like traditional IRAs, are

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[9] Indeed, recent statistics show that approximately 75% of households taking withdrawals from traditional IRAs contain at least one retired person. Investment Company Institute, *ICI Research Perspective* 21 (Nov. 2013), *available at* http://www.ici.org/pdf/per19-11.pdf. Only 8% of households that own a traditional IRA and are headed by a person under 59 took withdrawals during the 2012 tax year. *Id.* at 22.

designed to encourage saving for retirement through favorable tax treatment. Joint Committee on Taxation, *General Explanation of Tax Legislation Enacted in 1997*, at 43 (1997) (Roth IRA was created because Congress "believed that some individuals would be more likely to save if funds set aside in a tax-favored account could be withdrawn without tax after a reasonable holding period for retirement or certain special purposes"). Unlike many contributions to traditional IRAs, contributions to Roth IRAs are not tax-deductible. 26 U.S.C. §408A(c)(1); Choate, *Life and Death Planning for Retirement Benefits* 316-317 (7th ed. 2011). Qualified distributions from a Roth IRA—generally, distributions taken after a five-year waiting period and after the owner reaches age 59½—are tax-free. 26 U.S.C. §408A(d)(2)(A)-(B). And owners of Roth IRAs are not required to begin taking minimum distributions at age 70½, as with traditional IRAs. *Id.* §408A(c)(4)-(5). As with traditional IRAs, however, with limited exceptions, distributions from a Roth IRA over and above the owner's basis in the account taken before age 59½ are subject to a 10% tax penalty that discourages early withdrawals from the account. 26 C.F.R. §1.408A-6 (Q&A-4, Q&A-5); Choate 327.

2. Inherited IRAs, at issue here, are very different from non-inherited traditional or Roth IRAs. Inherited IRAs arise when the owner of an IRA dies. In that event, the owner's interest passes to a beneficiary, if the owner has named one. Publication 590 at 18. The treatment of the funds at that point differs significantly depending on whether the beneficiary is the decedent's spouse. If the beneficiary is a spouse, the spouse can elect to treat the IRA as his or her own, roll the IRA over into an existing IRA, or treat himself or herself as a non-spousal beneficiary. *Id.* If the named beneficiary

is not the decedent's spouse or if the spouse elects a non-spousal beneficiary designation, the Tax Code treats the account as an "inherited" IRA. 26 U.S.C. §408(d)(3)(C)(ii). A non-spousal beneficiary receives only a beneficial interest and does not own the account. Joint Committee on Taxation, *Technical Explanation of H.R. 4, The "Pension Protection Act of 2006"* at 178 (2006); Publication 590 at 18. This case concerns only IRAs that are inherited by a non-spousal beneficiary (or that a spouse elects to take in the same manner as a non-spousal beneficiary). Indeed, the Tax Code does not apply the term "inherited IRA" to IRAs whose beneficiary is a surviving spouse. 26 U.S.C. §408(d)(3)(C)(ii)(II).

When Congress created the IRA, it intended that money held in IRAs be used to provide "retirement income" and not general "funds for survivors." H.R. Rep. No. 93-807, at 133. It is therefore not surprising that the rules governing inherited IRAs differ fundamentally from those governing IRAs held by their original owners. Three differences are of particular import here.

First, unlike with traditional or Roth IRAs, there is no tax penalty on early withdrawal of funds in an inherited IRA. Indeed, there is no such thing as "early" withdrawal of funds in an inherited IRA. The beneficiary of an inherited IRA may withdraw the entire corpus of the account at any time for any reason without penalty. 26 U.S.C. §72(t)(2)(A)(ii). That is so regardless of the beneficiary's age or employment status. Nothing in the tax treatment of an inherited IRA would prevent (or even discourage) a 30-year-old beneficiary with a full-time job from withdrawing the entire

amount in the account immediately and using it to buy, say, a sports car.

Second, and of equal significance, inherited IRAs are governed by special required minimum distribution rules that have existed (in slightly varying forms) since Congress first created the IRA. *See* H.R. Rep. No. 93-807, at 133 (describing minimum distribution rules in original ERISA). While a traditional IRA permits the owner to defer required minimum distributions until age 70½, and a Roth IRA never requires the owner to take distributions—thus permitting the owner to save the corpus and earnings of the account until retirement—the beneficiary of an inherited IRA *cannot* delay taking distributions from the account until retirement. Rather, the beneficiary must either withdraw all the funds in the account within five years after the year of the owner's death, or begin taking yearly minimum distributions within one year after the year of the owner's death, with any distributions in excess of the beneficiary's basis in the account subject to normal income tax. 26 U.S.C. §§408(a)(6), 401(a)(9)(B); 26 C.F.R. §1.408-8 (Q&A-1(a) (incorporating 26 C.F.R. §1.401(a)(9)-3 (Q&A-1(a)))); *see generally* Cartano, *Taxation of Individual Retirement Accounts* §32.02[A] (2013).[10] Failure to take the required minimum distri-

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[10] Specifically, if the IRA owner dies before April 1 of the calendar year after attaining age 70½, and there is a designated beneficiary, the IRA must be distributed either by the end of the fifth calendar year after the year of the owner's death or over a period no longer than the beneficiary's life expectancy, beginning by the end of the calendar year after the year of the owner's death. 26 C.F.R. §1.401(a)(9)-3 (Q&A-1(a), Q&A-3(a)). Minimum required yearly distributions are calculated by dividing the account balance by the beneficiary's life expectancy. *Id.* §1.401(a)(9)-5 (Q&A-

butions results in a 50% excise tax on the amount that should have been distributed. 26 U.S.C. §4974. Again, these required minimum distribution rules apply regardless of the age or employment status of the beneficiary.

Third, Congress has affirmatively rejected attempts to use inherited IRAs to augment the beneficiary's own retirement funds. Before 1982, Treasury Department rules effectively allowed non-spousal beneficiaries "to treat the [inherited] IRA as one established on the beneficiary's own behalf." Joint Committee on Taxation, *General Explanation of the Revenue Provisions of the Tax Equity and Fiscal Responsibility Act of 1982*, at 313 (1982). But Congress specifically "repeal[ed] those rules" in the Tax Equity and Fiscal Responsibility Act of 1982. *Id.*; *see* Pub. L. No. 97-248, §243(b), 96 Stat. 324, 522-523. Thus, under current law, a non-spousal beneficiary may not roll over funds tax-free from an inherited IRA into an IRA in the beneficiary's name, 26 U.S.C. §408(d)(3)(C), and may not make additional tax-deductible contributions to the inherited IRA, *id.* §219(d)(4).

Thus, although IRAs are an important retirement vehicle for American workers, inherited IRAs are nothing "more than a structured settlement fund for an inheritance." Shumway, *Is an Inherited IRA a Retirement Account and Therefore Exempt?*, NABTalk: J. of

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5(c)(1)). If the IRA owner dies after April 1 of the calendar year after attaining age 70½, the IRA must be distributed over a maximum period of the longer of the beneficiary's life expectancy or the deceased owner's life expectancy, beginning by the end of the calendar year after the year of the owner's death. *Id.* §1.401(a)(9)-5 (Q&A-5(a)(1)). Essentially the same rules apply to inherited traditional IRAs and inherited Roth IRAs. Cartano §32.02[C].

the Nat'l Ass'n of Bankr. Trs. 36, 37 (Spring 2012). Although non-spousal beneficiaries may defer paying taxes on the funds in an inherited IRA for a period of time, thus avoiding a potentially large tax bill at the time of the original owner's death, they may not contribute their own pre-tax income to the account; they may not roll over funds in an inherited IRA to their own IRA; they may withdraw funds from the account at any time and for any reason without tax penalty; and they must begin to take withdrawals within a short time after the original owner's death, regardless of their age or employment status.

C. Facts And Proceedings Below

In 2000, Ruth Heffron established a traditional IRA with her daughter, petitioner Heidi Heffron-Clark, as the beneficiary. JA142. When her mother died in 2001, Ms. Heffron-Clark transferred money from her mother's IRA to an inherited IRA. *Id.* The value of the account at the end of 2001 was approximately $453,000. *Id.*

Beginning in 2002, Ms. Heffron-Clark—who was not retired—began to take monthly distributions from the inherited IRA. JA142. When Ms. Heffron-Clark and her husband filed for Chapter 7 bankruptcy in 2010, the inherited IRA was valued at approximately $293,000 (Pet. App. 10a), reflecting in part the withdrawals Ms. Heffron-Clark had made before bankruptcy. Ms. Heffron-Clark continued to withdraw funds from the account following the filing of her bankruptcy petition, including a withdrawal of $10,500 in November 2010. JA143. Ms. Heffron-Clark has never claimed that she intends to use the money held in the account for retirement.

In bankruptcy, petitioners claimed that the entire balance of the inherited IRA was exempt and thus beyond the reach of creditors under §522 of the Bankruptcy Code. Respondents—chapter 7 trustee William J. Rameker and petitioners' judgment creditors, Resul and Zinije Adili d/b/a Kegonsa Plaza—objected, arguing, among other things, that the inherited IRA does not contain "retirement funds." C.A. App. 97-100, 102-103. The bankruptcy court sustained the objections, reasoning that petitioners' inherited IRA "does not contain *anyone's* 'retirement funds'" because the mother was deceased and her daughter was receiving "distributions ... while both" she and her husband "continued to work." Pet. App. 29a-30a. The court reasoned that its conclusion was consistent with Congress's purpose in exempting IRAs from bankruptcy, which was to "permit debtors to retain amounts saved for their retirement and not sums inherited from their parents," *id.* at 30a-31a, and with the fundamentally different attributes of IRAs and inherited IRAs, *id.* at 31a.

The district court disagreed. Pet. App. 21a. The court thought that the statutory question could not "be resolved by looking at the plain meaning of the statute," and it questioned "[a]s a policy matter" why "inherited funds should be exempt from bankruptcy just because they were held by the decedent in the form of an IRA and not as stock or gold bullion." *Id.* at 19a, 21a. Nevertheless, the court held that the funds in inherited IRAs could be deemed "retirement funds" because at one time they had been Ms. Heffron-Clark's mother's retirement funds. *Id.* at 20a-21a.

The Seventh Circuit reversed the district court. Pet. App. 7a. Focusing on the attributes of an inherited IRA under federal tax law, the court of appeals ex-

plained that, unlike a typical IRA, "an inherited IRA is a time-limited tax-deferral vehicle, ... not a place to hold wealth for use after the new owner's retirement." *Id.* at 2a. The court reasoned that by the time of petitioners' bankruptcy, "the money in the inherited IRA did not represent *anyone's* retirement funds" but was a "pot of money" petitioners could use (and were using) "for current consumption." *Id.* at 4a. It explained that the inherited IRA did not contain "savings reserved for use after [its] owner[] stop[ped] working." *Id.* at 7a. Accordingly, the court held that "inherited IRAs represent an opportunity for current consumption, not a fund of retirement savings," and thus are not "retirement funds" under the Bankruptcy Code. *Id.*

SUMMARY OF ARGUMENT

To fall within the retirement-funds exemption, money (1) must be held in a specified tax-exempt account and (2) must be "retirement funds"—that is, it must be set aside or reserved for retirement. 11 U.S.C. §522(b)(3)(C), (d)(12). Text, structure, purpose, and precedent compel the conclusion that funds are set aside or reserved for retirement in this context only if the objective features of the account in which the funds are held are designed to encourage their use for retirement purposes. Inherited IRAs do not pass that test, and are not "retirement funds" under any plausible construction of that phrase, because beneficiaries of inherited IRAs are not required, encouraged, or even permitted to keep the funds set aside in those accounts until retirement. Petitioners' contrary reading, under which all money in any tax-exempt account is necessarily "retirement funds," does not interpret but rewrites the statute Congress enacted.

I.A. The phrase "retirement funds" in §522 is best understood to mean money "set aside" for retirement purposes, a point petitioners concede. And the text and statutory context of the exemption make clear that money is "set aside" for retirement when it is held in a covered account that Congress has established for retirement savings, as demonstrated by the objective rules governing the account itself.

In most of the tax-exempt accounts covered by the retirement-funds exemption, the funds contained in the account are set aside for retirement by virtue of restrictions placed on the owner's ability to access the funds in the account before retirement age, or other features that indicate Congress intended the account to serve as a vehicle for retirement savings. Not so with inherited IRAs. The beneficiary of such an account may access the funds held in the account at any time and for any purpose. In addition, the beneficiary must begin taking withdrawals from the account promptly, even if he or she is young and still employed. And, unlike a spousal beneficiary, a non-spousal beneficiary cannot treat an inherited IRA as if it were one established on his or her own behalf or roll the inherited funds, tax-deferred, into a different retirement account. Funds in inherited IRAs are simply not set aside for anyone's retirement, and thus are not "retirement funds."

B. The general purpose of the bankruptcy exemptions and the specific objectives of the retirement-funds exemption reinforce the plain meaning of the text. The bankruptcy exemptions in general are designed to provide for the debtor's true life necessities. Before this Court's decision in *Rousey* v. *Jacoway*, 544 U.S. 320 (2005)—decided after the Senate passed the retire-

ment-funds exemption and just ten days before the House did so—it was unclear whether traditional IRAs held by their original owners were exempt. Congress enacted the retirement-funds exemption against that backdrop, to protect retirement savings held in newer as well as more traditional vehicles and thus help ensure that debtors were not rendered destitute in old age. The exemption was not designed to protect accounts, like inherited IRAs, holding liquid assets that can be used at any time and that are not, in any sense, set aside for retirement. Shielding such accounts from creditors' legitimate claims would upset the careful balance Congress has established in the Bankruptcy Code between the interests of creditors and debtors.

C. This Court's decision in *Rousey* offers further support for respondents' interpretation of the statute. In *Rousey*, this Court addressed an analogous question: whether a traditional IRA gave its owner a "right to receive" a payment "on account of" age. In deciding that IRAs did confer such a right, the Court focused on the tax treatment of IRAs, including the tax penalty on withdrawals made before retirement age. Those characteristics are just as relevant, and the same mode of analysis sensibly applies, to the question whether funds are set aside or reserved for retirement. Likewise, *Rousey* considered whether traditional IRAs were "similar" to various types of deferred-compensation arrangements or were instead more like savings accounts. In deciding that question, the Court again focused on the restrictions placed on an IRA owner's ability to access the funds before retirement age—restrictions that do not apply to inherited IRAs, rendering them, at best, tax-deferred general-purpose savings accounts.

II.A. Petitioners' contrary interpretation of the statute is unpersuasive. Petitioners' basic argument is that, once money has been placed into one of the covered tax-exempt accounts, the money remains set aside for retirement even after the original account owner's death. That interpretation founders on the fundamental rule of statutory interpretation that each word or phrase in a statute must be given independent force. Under petitioners' view, *any* money held in one of the covered tax-exempt accounts will necessarily be exempt. But the statute exempts only "*retirement funds*" held in such accounts. Congress' choice to include that clear limitation must be given effect.

Petitioners' claim that money that was set aside for retirement in a covered account in the past remains so even after the original owner's death is also inconsistent with the common-sense understanding of what it means to be set aside for retirement. Being set aside for retirement is not some inherent, unchanging property of the money itself. Rather, it is a function of the manner in which the owner or beneficiary may hold or use the money in the account. And petitioners ignore the profound changes to the rules governing the treatment of the funds that occur when an IRA's original owner dies. In particular, the original owner's death immediately lifts the restriction on early withdrawals, prevents a non-spousal beneficiary from treating the funds as if they were the beneficiary's own retirement funds, and requires the beneficiary to begin withdrawing the funds promptly, rather than holding them in the account for retirement. In short, although the funds were once set aside for retirement, after the original owner's death they no longer are.

B. Rather than arguing that their reading advances the purposes of the Bankruptcy Code, petitioners contend only that their reading of the statute is not "absurd." But that argument is beside the point. Whether or not it would be absurd to exempt funds in inherited IRAs from bankruptcy, the application of traditional tools of statutory construction (including understanding the purposes of the bankruptcy exemptions) forecloses the conclusion that Congress did so.

In any event, petitioners' arguments are unpersuasive on their own terms. Congress undoubtedly had sound reasons for extending bankruptcy protection to tax-favored accounts containing retirement funds, but that says nothing about whether funds in inherited IRAs fall within that protection. And petitioners' speculation that exempting inherited IRAs furthers Congress's supposed objective of making inherited IRAs available as long-term financial planning tools ignores the specific choices Congress has made to prevent inherited IRAs from serving a retirement function. Likewise, petitioners' conjecture that exempting inherited IRAs would create beneficial incentives for retirement savings is unsupported by any evidence, either that such an incentive exists or that Congress had that consideration in mind in crafting the exemption. Finally, neither the choice of a handful of States to create a specific exemption for inherited IRAs nor any putative interest in uniformity supports petitioners' reading of the statute.

ARGUMENT

I. FUNDS HELD IN INHERITED IRAS ARE NOT "RETIREMENT FUNDS" AND THUS NOT EXEMPT UNDER SECTION 522 OF THE BANKRUPTCY CODE

The Bankruptcy Code contains carefully delineated exemptions from creditors' claims—exceptions to the general rule that a debtor's pre-petition assets should be available to satisfy pre-petition debt—for certain property that is necessary to ensure debtors a fresh start. Those exemptions include the one at issue here, for "retirement funds to the extent that those funds are in a fund or account that is exempt from taxation" under certain sections of the Tax Code. 11 U.S.C. §522(b)(3)(C), (d)(12). Funds in inherited IRAs are not exempt under this provision for a simple reason: They are not "retirement funds."

Funds held in an inherited IRA are not "retirement funds" because money in such accounts is not set aside for anyone's retirement. Under federal tax law, inherited IRAs are simply tax-deferred general-purpose savings accounts that bear none of the relevant hallmarks of accounts containing retirement funds. Money held in an inherited IRA is fully available for present consumption, with no tax penalty or other restriction tied to age or employment status. Distribution of such funds, moreover, bears no relation to age or retirement status, but rather *must* begin during the calendar year after the original owner's death, unless all the funds are withdrawn within five years.

The conclusion that inherited IRAs do not contain "retirement funds" does not depend on creating an "atextual exception" to the statute. Pet. Br. 18. To the contrary, it flows from the plain meaning of the phrase "retirement funds," which—as petitioners concede—

denotes funds set aside for retirement. There is no sense in which funds in inherited IRAs, which neither *must* nor *can* be saved for retirement, fit that definition. The plain meaning of the text, moreover, is reinforced by the purpose of the bankruptcy exemptions generally and the retirement-funds exemption specifically, and by this Court's decision in *Rousey*. *See Dolan* v. *USPS*, 546 U.S. 481, 486 (2006) ("Interpretation of a ... phrase depends upon reading the whole statutory text, considering the purpose and context of the statute, and consulting any precedents ... that inform the analysis.").

A. Statutory Text And Structure

1. Interpretation of the Bankruptcy Code, as with any statute, begins "'with the language of the statute itself.'" *Ransom* v. *FIA Card Servs., N.A.*, 131 S. Ct. 716, 723 (2011). On its face, the retirement-funds exemption contains two requirements. First, money claimed as exempt from the bankruptcy estate must be "retirement funds." Second, the money must be "in a fund or account ... exempt from taxation under" one of several specified sections of the Tax Code. 11 U.S.C. §522(b)(3)(C), (d)(12).

The question presented here is whether inherited IRAs satisfy the threshold requirement that they contain "retirement funds." Because the Bankruptcy Code does not define "retirement funds," the phrase should be given its "ordinary meaning." *Ransom*, 131 S. Ct. at 724. Petitioners must accordingly concede that "retirement funds" means "'sum[s] of money'" "set aside for the day when an individual stops working." Pet. Br. 19-20 (citing *American Heritage Dictionary of the English Language* 712 (4th ed. 2000); *Webster's Third New*

International Dictionary of the English Language Unabridged 921, 1939 (2002)).

Yet, at the same time, petitioners contend that *any* funds in an account that is exempt from taxation under one of the specified sections of the Tax Code are, by definition, "set aside for retirement." As more fully discussed below, petitioners' interpretation effectively reads the phrase "retirement funds" out of the statute altogether, contrary to basic principles of statutory construction. *See, e.g.*, Scalia & Garner, *Reading Law: The Interpretation of Legal Texts* 174-179 (2012). Petitioners appear to assume that the only alternative way to determine whether funds are "set aside for retirement" is a case-by-case inquiry into the debtor's subjective intended use for the funds at issue.

There is, however, a reading of the statute that neither renders the phrase "retirement funds" surplusage nor requires any inquiry into subjective intent. As the exemption's text and context make clear, money is "set aside" for retirement (and is thus "retirement funds") when it is held in a covered account that Congress has established *for retirement savings*, as made clear by objective rules governing the account that help to ensure that the money is used for such retirement purposes.

The phrase "retirement funds" does not stand alone, but must be read in "context." *Jones* v. *United States*, 527 U.S. 373, 389 (1999) ("Statutory language must be read in context and a phrase 'gathers meaning from the words around it.'"); *see also United Sav. Ass'n of Tex.* v. *Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 371 (1988) (construction of the Bankruptcy Code is a "holistic endeavor"). Here, Congress exempted "retirement funds" only "to the extent that

those funds are in a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code." The defining feature of most accounts that are tax-exempt under those sections is that their tax treatment is designed to encourage saving for retirement.

For example, the Tax Code imposes a 10% tax penalty on certain distributions from qualified retirement plans made before the employee or owner attains age 59½. 26 U.S.C. §72(t)(1), (t)(2)(A)(i). "Qualified retirement plans" include almost all the types of tax-exempt accounts covered by the "retirement funds" exemption: qualified stock bonus, pension, or profit-sharing plans described in §401(a) and tax-exempt under §501(a); annuity plans and contracts described in §403; and individual retirement accounts and annuities described in §408. *Id.* §4974(c). The 10% penalty also applies to most distributions of earnings from Roth IRAs, described in §408A, made before age 59½ (contributions to Roth IRAs are taxed when they are earned and thus not taxed on distribution). 26 C.F.R. §1.408A-6 (Q&A-5).[11] As this Court has recognized, the 10% tax penalty was designed "to preclude"—or at a minimum strongly discourage—"early access" to funds in the accounts prior to reaching retirement age, and thus ensure that

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[11] As for the other two sections of the Tax Code to which the exemption refers, the individual retirement plans comprising a §414(x) "combined" plan are generally subject to the same tax rules as if they were not part of the combined plan. 26 U.S.C. §414(x)(1). Section 457(b) "deferred compensation plans" are not subject to the penalty tax, *id.* §4974(a), (c); *see generally id.* §457(b), but that is because *no* distributions may be made to a plan participant before the participant turns 70½ or leaves his employer, absent an unforeseeable emergency, *id.* §457(d)(1)(A).

those funds could serve as a substitute for wages once the owner or employee retired. *Rousey* v. *Jacoway*, 544 U.S. 320, 327 (2005).

In light of that statutory context, by far the most natural interpretation of the phrase "retirement funds" is money that is "set aside"—that is, "reserve[d]," *Webster's Third* 2077—for retirement by virtue of being held in a tax-exempt account with objective features—for example, a restriction on or penalty for early withdrawal—to help ensure that money is, in fact, used for retirement purposes. Almost all, but not all, tax-exempt accounts established under the Tax Code and referenced in the second part of the retirement-funds exemption share those attributes, and those attributes therefore properly inform the meaning of "retirement funds."

This reading of the exemption makes sense of the statutory text and context, is workable, and gives independent meaning to the two limitations in the retirement-funds exemption, consistent with the "'cardinal principle of statutory construction' that 'a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.'" *TRW Inc.* v. *Andrews*, 534 U.S. 19, 31 (2001); *see RadLAX Gateway Hotel, LLC* v. *Amalgamated Bank*, 132 S. Ct. 2065, 2070-2071 (2012). To qualify for the retirement-funds exemption, money must not only (1) be in an account "exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a)" of the Internet Revenue Code, but it must *also* (2) be in an account that is structured to help ensure that money held in the account is actually set aside for "the day when an individual stops working" (Pet. Br. 20).

2. Under the objective test described above, money in an inherited IRA is not "retirement funds." Unlike the owner of an IRA or other type of retirement account, the beneficiary of an inherited IRA may withdraw all the funds in the inherited IRA immediately without *any* tax penalty, regardless of the beneficiary's age or retirement status. 26 U.S.C. §72(t)(2)(A)(ii). Thus, money held in an inherited IRA is in no sense "set aside," or reserved, for retirement. Instead, the beneficiary may enjoy immediate and unrestricted use of the funds for any purpose whatsoever.

Moreover, under the required minimum distribution rules, a beneficiary of an inherited IRA must begin taking distributions from the account promptly, again without regard to age or retirement status. *See* 26 U.S.C. §§408(a)(6), 401(a)(9)(B); 26 C.F.R. §1.408-8 (Q&A-1(a) (incorporating 26 C.F.R. §1.401(a)(9)-3 (Q&A-1(a)))). By contrast, the Tax Code does not require owners of the other types of tax-exempt accounts covered by the "retirement funds" exemption to begin taking lifetime distributions until the owner reaches retirement age (and in the case of Roth IRAs, does not require any distributions during the owner's lifetime). Consistent with these accounts' purpose of serving as a vehicle for retirement savings, owners are allowed and encouraged to keep their funds in the accounts until they retire. Precisely the opposite is true of inherited IRAs, whose beneficiaries are not permitted to keep their funds in the account until retirement.

Similarly, a beneficiary may not make additional tax-deductible contributions of his or her own to the inherited IRA. 26 U.S.C. §219(d)(4). Nor may a beneficiary roll over funds tax-free from an inherited IRA

into an IRA established in the beneficiary's name. *Id.* §408(d)(3)(C).

These features of an inherited IRA demonstrate that inherited IRAs are simply not vehicles for retirement savings, and the funds in inherited IRAs are in no sense "set aside for retirement." Congress chose not to permit non-spousal beneficiaries of inherited IRAs to treat those funds as their own, either by making pre-tax contributions to them or by rolling them over into the beneficiary's own IRA. And Congress not only *permitted* beneficiaries of inherited IRAs to withdraw the funds in those accounts without penalty before age 59½, it *required* them to begin withdrawing the funds promptly, regardless of their age. In other words, beneficiaries of inherited IRAs not only may withdraw the corpus of the account before retirement, but *may not leave the corpus untouched until retirement*—surely a defining feature of any account that can fairly be said to contain funds set aside for retirement.

3. Petitioners argue that, in theory, "a beneficiary *can* draw on the funds in an inherited IRA for her own retirement." Br. 40. But funds in an ordinary bank account or under a mattress *could* be saved for or spent during retirement, yet they are not exempt in bankruptcy. And petitioners rightly acknowledge (at 43-44) that Congress did not intend operation of the retirement-funds exemption to "turn on the debtor's subjective purpose." That an individual debtor might intend to use the money in an inherited IRA for retirement is thus of no significance to application of the exemption. What matters are the objective attributes of the account itself.

Furthermore, the distribution rules petitioners cite do not come close to establishing that Congress intend-

ed inherited IRAs to serve a retirement function. When the owner of an IRA dies before the interest in the account is fully distributed, a designated beneficiary may elect to take the account balance out over the course of his or her expected lifetime. 26 U.S.C. §401(a)(9)(B)(iii); 26 C.F.R. §1.408-8 (Q&A-1(a) (incorporating 26 C.F.R. §1.401(a)(9)-3 (Q&A-1(a)))). But a beneficiary who elects this option *may* take the entire balance of the account out at any time without penalty, as if the account were a regular savings account, and use the money withdrawn to purchase a car or house or anything else. And, unlike even a typical savings account, the beneficiary of an inherited IRA *must* either withdraw the balance within five years or begin taking minimum distributions during the calendar year after the year of the owner's death. 26 U.S.C. §401(a)(9)(B)(iii)(III). The money in the account is therefore in no sense "set aside" for retirement.

4. Finally, petitioners advance (at 44-45) two objections to an objective inquiry that looks to the defining characteristics of an inherited IRA to determine whether money held in the account is retirement funds. Neither is persuasive.[12]

First, petitioners argue (at 44) that this "limitation cannot be squared with the statutory text," but that is not so. Petitioners contend that "[o]nly one 'defining

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[12] Petitioners set up and knock down a straw man in arguing (at 42-44) that the applicability of the exemption does not turn on a debtor's subjective intended use for the funds. Respondents agree. But petitioners' criticism of a subjective standard highlights why petitioners' description (at 40) of ways in which beneficiaries might "choose[] to use" funds in an inherited IRA for retirement is an irrelevant detour.

characteristic' of a retirement account matters[,] ... namely, that the account is 'exempt from taxation' under one of the enumerated provisions" of the Tax Code. *Id.* But it is petitioners' reading that cannot be squared with the statutory text, which requires that, to be exempt in bankruptcy, funds must not only be in a tax-exempt account, but must also be "retirement funds."

Petitioners also object (at 44) that this reading would "raise the possibility that some funds would not be exempt from the bankruptcy estate even in the hands of the initial owner," citing Roth IRAs and §457(b) plans. But Roth IRAs and §457(b) plans are easily distinguishable from inherited IRAs based on the objective characteristics of the accounts.

As discussed above, *see supra* p. 13, under the governing regulations, "[t]he 10-percent additional tax under section 72(t) will apply," absent an exception, "to any distribution from a Roth IRA includible in gross income" and made before age 59½, 26 C.F.R. §1.408A-6 (Q&A-5(a)), just as it would apply to distributions from other tax-exempt retirement accounts. *Contributions* to a Roth IRA are made after paying tax on the money contributed, 26 U.S.C. §408A(c)(1), and thus returns of those contributions are not included in the owner's gross income for tax purposes, 26 C.F.R. §1.408A-6 (Q&A-1(b)). But the 10% penalty tax will generally apply to withdrawals of any *interest* or *earnings* in a Roth IRA before age 59½, *id.* (Q&A-4, Q&A-5(a)), providing strong evidence that Congress intended such accounts to enable retirement saving.

The same is true for §457(b) plans. Petitioners are correct that there is no tax penalty for early withdrawal under those plans (Br. 44), but that is because Congress *barred* withdrawals from such plans "earlier than

... the calendar year in which the participants attains age 70½," except for "unforeseeable emergency" or severance from the employer, 26 U.S.C. §457(d)(1)(A); *see supra* n.11.

Moreover, both Roth IRAs and §457(b) plans *permit* the funds in the account to be held in the account until retirement age. The rules governing inherited IRAs, by contrast, do not; funds in an inherited IRA must begin to be withdrawn within the calendar year after the original owner's death if they are not all withdrawn within five years. That fundamental aspect of inherited IRAs is completely inconsistent with any notion that they contain funds "set aside for retirement."

B. Statutory Purpose

The conclusion that money in an inherited IRA is not "retirement funds" is reinforced by "'the objects and policy'" of federal bankruptcy law. *Stafford* v. *Briggs*, 444 U.S. 527, 535 (1980); *see McCreary County* v. *ACLU of Ky.*, 545 U.S. 844, 861 (2005) ("Examination of purpose is a staple of statutory interpretation."); *cf.* Pet. Br. 37 (acknowledging that considerations of purpose may be relevant unless "a statute is 'utterly devoid of language that could remotely be thought' to support a proposed interpretation").

"[E]very asset the Code permits a debtor to withdraw from the estate is an asset that is not available to ... creditors." *Schwab* v. *Reilly*, 560 U.S. 770, 791 (2010). Federal bankruptcy exemptions are thus not designed "to provide a windfall to debtors but ... to provide them with the necessaries by which to live and make a living." 3A Singer & Singer, *Statutes and Statutory Construction* §70:5 (7th ed. 2010). Congress understood in enacting the original list of federal bank-

ruptcy exemptions that the "[t]he historical purpose of ... exemption laws has been to protect a debtor from his creditors, to provide him with the basic necessities of life so that ... the debtor will not be left destitute and a public charge." H.R. Rep. No. 95-595, at 126 (1977); *see also United States* v. *Security Indus. Bank*, 459 U.S. 70, 83 (1982) (Blackmun, J., concurring in judgment) (exemption statutes were "enacted to protect the debtor's essential needs"). To achieve those purposes, §522 permits the debtor to exempt interests in property reasonably calculated to enable the debtor to meet his or her basic needs, such as interests up to a certain amount in a debtor's "residence," 11 U.S.C. §522(d)(1), a "motor vehicle," *id.* §522(d)(2), "household furnishings," *id.* §522(d)(3), and "implements, professional books, or tools, of the trade of the debtor," *id.* §522(d)(6). In addition, Congress exempted certain rights to receive payments in the nature of wage substitutes for debtors who could not earn income due to age, disability, or marital status. *Id.* §522(d)(10); *Rousey*, 544 U.S. at 329.

Properly understood, the retirement-funds exemption aligns perfectly with the overall purpose and structure of the bankruptcy exemptions. Congress did not want bankruptcy to eliminate "[r]etirement [s]avings," H.R. Rep. No. 109-31 pt. 1, at 63-64 (2005), consistent with the basic aim that bankruptcy not render a debtor "destitute and a public charge" in old age or otherwise, H.R. Rep. No. 95-595, at 126. By protecting "retirement funds" held in a tax-exempt account, Congress ensured that traditional IRAs would be protected, like "other benefits tied to age, illness or disability that are afforded protection under bankruptcy law." 151 Cong. Rec. E704 (Apr. 19, 2005) (statement of Rep. Moore). The exemption thus would help to ensure that "[t]he retirement savings of ... elderly Americans" are not

wiped out "in bankruptcy proceedings." 144 Cong. Rec. S10508 (Sept. 17, 1998) (statement of Sen. Hatch).

Interpreting the retirement-funds exemption to shield funds in an inherited IRA does not jibe either with that exemption's specific purpose or the general purpose of the Code's exemption provisions. Funds held in an inherited IRA are not set aside for the debtor's (or anyone else's) retirement in any objective sense. There is no indication that Congress intended inherited IRAs to serve the retirement functions of traditional IRAs or other types of retirement accounts. To the contrary, everything Congress did in shaping inherited IRAs—from lifting the tax penalty on early withdrawals and requiring withdrawals prior to retirement age to prohibiting transactions that would allow beneficiaries to treat the funds as their own retirement savings—indicates that it did not.

Thus, exempting inherited IRAs from the bankruptcy estate would seriously disrupt the fundamental balance underlying the federal exemption scheme by granting debtors an unwarranted cash "windfall." 3A Singer & Singer §70:5. Exempting funds in inherited IRAs—"liquid asset[s] which may be accessed ... without penalty," *In re Sims*, 241 B.R. 467, 470 (Bankr. N.D. Okla. 1999)—would place potentially substantial assets beyond the reach of creditors without any assurance that the money is necessary to satisfy an individual debtor's essential needs, such as saving for retirement. Treating such funds as exempt from creditors' claims would "convert a fresh start into a free pass" and upset the careful balance Congress struck between the inter-

ests of debtors and creditors. *Schwab*, 560 U.S. at 791.[13]

Such a reading is particularly anomalous given that Congress has not exempted other types of inherited money. Consider two debtors, each of whom received assets upon the death of a parent one year before declaring bankruptcy. One debtor received a cash inheritance, while the other was the beneficiary of an inherited IRA. The only difference between the two situations is that the debtor with the inherited IRA has the ability to defer taxes on the full amount of the inheritance. The inherited IRA has no more connection to the debtor's retirement than the cash does. Yet if inherited IRAs are exempt, the debtor who received the inherited IRA could shield the funds from creditors. The debtor who received the inheritance in cash, by contrast, could not. That difference in treatment serves no apparent bankruptcy purpose.

It would be even stranger for Congress to have exempted inherited IRAs in view of the substantial amounts of money that can be shielded from creditors under the exemption. A debtor may exempt up to $1,245,475 held in IRAs, an amount that can be adjusted upward "if the interests of justice so require."

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[13] Petitioners' claim (at 41) that "a range of assets" can be used for "current consumption" under the exemptions misses the point. The exemptions are designed to ensure either that the debtor's present basic needs are met (thus, for example, the debtor can exempt a limited amount of equity in a house, 11 U.S.C. §522(d)(1), or if the debtor has no house, a limited amount of "any property," *id.* §522(d)(5)) or that the debtor can survive if retired, disabled, or otherwise unable to support himself or herself. Exempting funds in an inherited IRA serves neither purpose.

11 U.S.C. §522(n); 4 *Collier on Bankruptcy* §522.10(9), at 522-92 (16th ed. 2013). Moreover, the limit does not apply to amounts rolled over from other types of retirement plans—which may be exempted without any limit—but only to direct contributions, meaning that the limit has few if any teeth. *See* 11 U.S.C. §522(n); Hennigan, Rousey *and the New Retirement Funds Exemption*, 13 Am. Bankr. Inst. L. Rev. 777, 796 (2005) (noting that "th[e] cap is unlikely to matter very often").[14]

By contrast, a debtor can exempt only up to $22,975 of equity in a residence, 11 U.S.C. §522(d)(1), $3,675 of value in a motor vehicle, *id.* §522(d)(2), and $2,300 in professional tools of the trade, *id.* §522(d)(6)—exemptions at the core of the Bankruptcy Code's fresh-start policy. Allowing a debtor to exempt such large amounts under §522(n) makes sense if such funds are set aside to support a debtor throughout the period he or she is retired and not drawing a wage. But exempting inherited IRAs from creditors' claims in bankruptcy would allow debtors to shield substantial sums of money they are using for present consumption with no countervailing justification. That outcome finds no support in the purposes of the bankruptcy exemption scheme.[15]

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[14] Petitioners' argument (at 34) that the existence of this cap "affirmatively illustrates that Congress was capable of placing limitations on the 'retirement funds' exemption when it wanted to" ignores that the phrase "retirement funds" is the relevant limitation, one they seek to read out of the statute.

[15] An amicus argues that excluding inherited IRAs from the exemption would create an "extraordinary anomaly" because "inherited 401(k)" plans are protected from creditors by ERISA's anti-alienation provision. Tribune Co. Br. 18. Petitioners do not

C. Judicial Precedent

This Court's decision in *Rousey* further supports the conclusion that inherited IRAs do not contain "retirement funds" under §522. As discussed above, *see supra* p. 8, *Rousey* held that traditional IRAs gave the owner a "'right to receive ... a payment under a stock bonus, pension, profitsharing, annuity, or similar plan or contract on account of ... age,'" and were thus exempt under §522(d)(10)(E) of the Bankruptcy Code. 544 U.S. at 323-324. The characteristics of traditional IRAs that led this Court to hold them exempt under §522(d)(10)(E) demonstrate why inherited IRAs—which lack all of those characteristics—are not exempt under the retirement-funds exemption.

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embrace this view, and with good reason. As an initial matter, any such anomaly would be rare. Employer-sponsored retirement plans, including 401(k) plans, normally require a lump-sum distribution upon the death of the plan participant. *See, e.g.*, Bouchard & Zadworny, *Growing Old Together: Estate Planning Concerns for the Aging Same-Sex Couple*, 30 W. New Eng. L. Rev. 713, 739 (2008). That is why Congress allowed non-spousal beneficiaries of qualified plans (including 401(k) plans) to roll funds from those plans into an inherited IRA. 26 U.S.C. §402(c)(11). More fundamentally, any "anomaly" is attributable to the clear operation of the statutory scheme itself. As discussed above, *see supra* n.7, this Court held in *Patterson* v. *Shumate*, 504 U.S. 753, 759-760 (1992), that pension plans subject to ERISA's anti-alienation protections are excluded from the bankruptcy estate pursuant to §541(c)(2) of the Bankruptcy Code, which provides that "[a] restriction on the transfer of a beneficial interest of the debtor in a trust that is enforceable under applicable nonbankruptcy law is enforceable" in bankruptcy. That certain "inherited" funds may be protected by §541(c)(2) while others may not is a consequence of Congress's choice to extend the anti-alienation provision to some accounts and not to others. It is not a reason to read the retirement-funds exemption to protect what it does not.

Rousey first held that IRAs entailed a right to receive payment "on account of"—*i.e.*, because of—the debtors' age. 544 U.S. at 327. In doing so, it examined "[t]he statutes governing IRAs," which "persuade[d]" the Court that a "right to payment from IRAs is causally connected to [debtors'] age." *Id.* In reaching that conclusion, the Court applied an objective inquiry that turned on the characteristics of the account. In particular, the Court focused on the tax penalty that applies to withdrawals before the owner reaches age 59½, reasoning that "[t]he deterrent to early withdrawal [that the tax penalty] creates suggests that Congress designed it to preclude early access to IRAs," and that the penalty in fact "substantially deters early withdrawals." *Id.* The Court rejected the view that an IRA owner's ability to make penalty-free withdrawals for certain "specific and narrow uses" meant that payments from an IRA were not linked to age. *Id.* at 328 n.3. The fact remained that holders "cannot obtain unrestricted use of their funds until age 59½." *Id.*

While the statutory provisions are differently worded, that analysis is nonetheless instructive here. Funds held in a traditional IRA are "retirement funds" by virtue of the account's objective characteristics, including the early-withdrawal penalty, which Congress carefully crafted to ensure that funds held in an IRA were used predominantly for retirement. Inherited IRAs, by contrast, allow beneficiaries "unrestricted use of their funds," *Rousey*, 544 U.S. at 328 n.3, at any time and for any purpose. Just as the early-withdrawal penalty persuaded the Court in *Rousey* that traditional IRAs are accounts that carry a right to payment "on account of age," inherited IRAs' lack of any such penalty fortifies the conclusion that such accounts do not contain "retirement funds."

Rousey also held that traditional IRAs are "similar" to stock bonus, pension, profit-sharing, and annuity plans or contracts because they provide "a substitute for wages" and "are not mere savings accounts." 544 U.S. at 329. In arriving at this conclusion, the Court again relied in substantial part on the tax penalty linked to early withdrawals, explaining that the penalty "erects a substantial barrier to early withdrawal" that "restrict[s] preretirement access to the funds" and helps ensure that money held in an IRA provides a "substitute for wages" in retirement. *Id.* at 331-332. In addition, the Court relied on the minimum distribution requirements, which "require distribution to begin at the latest in the calendar year after the year in which the accountholder turns 70½," forcing owners of a traditional IRA to "begin to withdraw funds when they are likely to be retired and lack wage income." *Id.* at 331.

Again, the Court's analysis is instructive here: Inherited IRAs have none of the structural hallmarks that led the Court to conclude that traditional IRAs are designed to provide a substitute for wages in retirement. The beneficiary of an inherited IRA may withdraw all the funds in an inherited IRA immediately without tax penalty, 26 U.S.C. § 72(t)(2)(A)(ii), and a beneficiary must begin taking distributions from inherited IRAs promptly, without regard to age or employment status, *id.* §§408(a)(6), 401(a)(9)(B); 26 C.F.R. §1.408-8 (Q&A-1(a) (incorporating 26 C.F.R. §1.401(a)(9)-3 (Q&A-1(a)))). Under *Rousey*'s logic, an inherited IRA does not provide a substitute for wages in retirement, and accordingly is not "retirement funds," but rather a general-purpose savings account.

II. PETITIONERS' ALTERNATIVE READING OF THE RETIREMENT-FUNDS EXEMPTION IS UNPERSUASIVE

Petitioners agree (at 43-44) that the debtor's subjective intent does not determine whether money held in an inherited IRA falls within the retirement-funds exemption. Instead, petitioners insist (at 17) that "Section 522 sweeps broadly to exempt ... funds in every major type of tax-exempt retirement account." According to petitioners (at 20), all funds held in an inherited IRA are retirement funds "because they have been set aside for retirement by virtue of being deposited in an individual retirement account" by the original owner.

Petitioners' statutory argument fails at each step. Far from reflecting the "plain meaning" of the exemption, petitioners' interpretation robs the phrase "retirement funds" of any significance—as petitioners all but concede—contrary to fundamental canons of interpretation. And petitioners' assertion that, once funds are set aside for retirement in a traditional IRA, they remain retirement funds in the hands of a beneficiary of an inherited IRA ignores the fundamental differences in form and substance between the accounts. Finally, petitioners' half-hearted speculations as to why Congress might have intended such a counterintuitive result are unpersuasive.

A. Petitioners' Interpretation Contravenes The Text Of Section 522

1. The key premise of petitioners' statutory argument (at 20) is that, "[o]nce funds have been set aside in a retirement account, ... they continue to be 'retirement funds' ... as long as they remain in such an account." That premise is unsound for two primary rea-

sons. And once the erroneous premise is rejected, petitioners' statutory argument crumbles.

First, petitioners' reading does not interpret but rewrites the text by rendering the phrase "retirement funds" surplusage. In petitioners' view, any funds held in an account that is tax-exempt under one of the enumerated sections of the Tax Code are necessarily retirement funds. That is because, according to petitioners (at 22), all such accounts are "retirement accounts," and funds in such accounts are "retirement funds" by definition.[16]

Petitioners' reading therefore ascribes no independent significance to the phrase "retirement funds." Their interpretation thus violates "one of the most basic interpretive canons"—"that a statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant." *Corley* v. *United States*, 556 U.S. 303, 314 (2009) (internal quotation marks and alterations omitted); *see TRW Inc.* v. *Andrews*, 534 U.S. 19, 31 (2001) ("It is 'a cardinal principle of statutory construction' that 'a statute ought, upon the whole, to be so con-

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[16] Petitioners' reading seems to turn in part on mere terminology—that is, the notion that any account denominated a "retirement account" in the Tax Code necessarily contains "retirement funds" within the meaning of the Bankruptcy Code. But it is a well-accepted "interpretive principle that characterizations in the Internal Revenue Code are not dispositive in the bankruptcy context." *United States* v. *Reorganized CF&I Fabricators of Utah, Inc.*, 518 U.S. 213, 224 (1996). There is no reason to depart from that principle here; to the contrary, as discussed in text, doing so would contravene every textual and contextual indication of the meaning of "retirement funds."

strued that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.'").

An interpretation that robs "retirement funds" of meaning does especial violence to the text because "retirement funds" are the direct object of the exemption. *See, e.g.*, 11 U.S.C. §522(d)(12) ("The following property may be exempted ...: *Retirement funds* to the extent that those funds are in a fund or account that is exempt from taxation[.]" (emphasis added)). A phrase so central to the exemption should not be effectively erased from the statute on the theory that Congress wrote an "awkward" provision (Pet. Br. 24), especially where, as here, there is a workable construction of the text that gives meaning to all the words in the law Congress wrote.[17]

The history of the exemption's enactment supports the conclusion that Congress made the knowing choice to limit the exemption's scope to "retirement funds,"

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[17] Petitioners struggle (at 22) to ascribe some independent force to the phrase "retirement funds" by pointing out that one of the identified sections of the Tax Code exempts certain "organizations" from tax. *See* 26 U.S.C. §501(a). But, as petitioners themselves recognize (at 22), those provisions will never be in play in individual bankruptcy proceedings, which is the only context in which the exemption applies. *See* 11 U.S.C. §522(b)(1) (setting forth exemptions for "individual debtor[s]"). Petitioners also suggest (at 22-23) that the phrase "retirement funds" was included to "avoid unintended consequences" if Congress later amended the Tax Code to expand the scope of tax-exempt accounts under the relevant provisions. By far the more natural reading of the statutory language is that Congress recognized that not all the enumerated tax-exempt accounts were necessarily designed to promote retirement savings, and thus not all necessarily contain "retirement funds."

rather than simply exempting all funds in accounts exempt under the enumerated Tax Code provisions. The National Bankruptcy Review Commission, established by Congress in 1994 to study reform of the bankruptcy system, originally recommended that "[a]ll funds" held in certain tax-exempt accounts be exempt in bankruptcy. National Bankruptcy Review Commission, *Bankruptcy: The Next Twenty Years* 139 (1997). Congress could have used similar language had it wished to exempt any funds held in one of the specified accounts, as petitioners contend. The statute Congress actually enacted, however, does not refer generically to "funds" but specifically to "retirement funds." That choice should be given effect.

Second, and in any event, the theory that retirement funds in a traditional IRA remain retirement funds in an inherited IRA after the death of the original owner elides the critical differences in form and function between the accounts. Relying on the Fifth Circuit's decision in *In re Chilton*, 674 F.3d 486, 489 (5th Cir. 2012), petitioners simply assert (at 20) that once funds "have been" set aside for retirement, they necessarily remain set aside for retirement "as long as they remain in such an account." This is little more than *ipse dixit*. Petitioners never explain—nor does *Chilton*—why funds that have been "set aside" for retirement forever remain so, notwithstanding the death of the person for whose retirement they were set aside. Petitioners' assertion that the funds remain "tax-exempt" (Br. 14, 21, 38) does not answer that question; it merely conflates, once again, the separate "retirement funds" requirement with the requirement that the funds be in a tax-exempt account. In short, that funds were, in the past, set aside for someone else's retirement is irrelevant; the statute is more sensibly and naturally read to

ask whether the funds *are currently* "set aside" for retirement, an inquiry that turns on the objective rules governing the account, not some inherent quality of the money.[18]

Petitioners' view (at 21) that "[t]he owner's death does not in any way affect the funds in the account" ignores the significant differences between a traditional IRA and an inherited IRA. After a traditional IRA owner dies, a non-spousal beneficiary may elect to withdraw all funds immediately or may choose to take distributions according to the minimum distribution rules discussed above. The money held in the account at that point is governed by an entirely different set of rules: The beneficiary may not elect to treat the IRA as his or her own, thus using the account for his or her own retirement; the money may be withdrawn at any time for any purpose; and the beneficiary must begin to take distributions promptly regardless of age or employment status. It defies common sense and stretches the English language beyond its breaking point to say those funds are "set aside" for retirement.

To make matters concrete, imagine a scenario in which a 55-year-old man dies, leaving his 30-year-old son as sole beneficiary of an IRA worth $100,000. At that point, the son has a choice regarding what to do with the money. He could withdraw it at once, paying any applicable income tax, and spend it immediately. He could opt to take payment under the five-year rule,

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[18] Focusing on whether funds are set aside for retirement at the time of the bankruptcy petition, and not some past date, also makes sense given that the bankruptcy estate itself is defined by reference to the date the case is commenced, as petitioners acknowledge. 11 U.S.C. §541(a)(1); Pet. Br. 35.

which would require him to withdraw the entire balance within five years but would not require him to take any distributions before that time. Or he could choose to take distributions under the life-expectancy method, which would allow him to withdraw money from the account at any time without penalty, and would require him to begin to take distributions before the end of the calendar year after his father's death. What he cannot do is effectively treat the balance of the account as his own "retirement funds" by leaving the funds in the account to grow tax-deferred until his retirement. The money in the account, though once set aside for retirement by the father, is no longer anyone's "retirement funds."

2. These textual difficulties with petitioners' interpretation are more than sufficient to require that it be rejected. Petitioners advance a handful of textual points in support of their reading, but none is persuasive.

a. Petitioners first argue (at 21) that their interpretation is "confirm[ed]" by 11 U.S.C. §522(b)(4)(C). That section provides that a "direct transfer of retirement funds from [a] fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code ... shall not cease to qualify for [the retirement-funds exemption] by reason of such direct transfer." Petitioners contend (at 22) that this provision establishes that money's status as "retirement funds" is fixed when it is originally deposited in an IRA and is unaffected "by subsequent events" such as the death of the owner and transfer to an inherited IRA.

Petitioners are wrong. Section 522(b)(4)(C) simply ensures that a trustee-to-trustee transfer of "retirement funds" from one account to another does not de-

prive the funds of protection solely "by reason of such direct transfer." Transfers between retirement accounts are commonplace, and Congress was concerned that when there "is a direct transfer of an individual's retirement funds by the trustee of a plan exempt from the bankruptcy estate to the trustee of another retirement plan that is exempt ..., there is a question ... whether these retirement funds are exempt while in transit." 144 Cong. Rec. S10508 (statement of Sen. Hatch). For example, the owner of an IRA can make a direct trustee-to-trustee transfer of funds from one IRA to another without incurring tax liability. *See* Rev. Rul. 78-406, 1978-2 C.B. 157. Section 522(b)(4)(C) ensures that such a transfer between exempt accounts does not affect whether the funds are exempt. The provision says nothing about whether Congress intended a beneficiary's interest in a decedent's former retirement funds to be exempt in the first place. In any event, it is not any "transfer" of funds from a traditional IRA to an inherited IRA that renders the funds nonexempt in bankruptcy, but the fact that, once the original accountholder dies and his or her interest passes to a beneficiary, the funds held in the account bear none of the objective indicia of retirement funds discussed above.

b. Petitioners also contend that the omission of the words "the debtor's" from the retirement-funds exemption supports their interpretation. Pointing to the "presumption that, '[w]here Congress includes particular language in one section of a statute but omits it in another,' Congress is 'act[ing] intentionally or purposefully in the disparate inclusion or exclusion,'" petitioners argue (at 33-34) that Congress must have intended to permit the debtor to exempt his or her interest in *someone else's* retirement funds, not just the debtor's

own. Putting aside the sheer implausibility of the notion that Congress would have intended the retirement-funds exemption to shield a pot of cash with no connection to the debtor's retirement, petitioners' reliance on this presumption is misplaced for three reasons.

First, the presumption is of little aid when, as here, the statutory sections being compared were enacted at different times. *See Gomez-Perez* v. *Potter*, 553 U.S. 474, 486 (2008) (rejecting "negative implications raised by disparate provisions" where provisions "were not considered or enacted together" (internal quotation marks and brackets omitted)). Congress enacted most of the §522(d) exemptions as part of the 1978 Bankruptcy Code, whereas the retirement-funds exemption was not added until 2005.

Second, even if the exemptions had been enacted together, rather than decades apart, the presumption would not support petitioners' case because the inclusion of the words "the debtor's" in other exemptions does not have the significance they ascribe to it. Only the debtor's interests in property can be exempted, because only the debtor's property can enter the bankruptcy estate in the first place. *See* 11 U.S.C. §541(a)(1) (including in the estate "all legal or equitable interests of the debtor in property as of the commencement of the case"). In most of the other exemptions, the phrase "the debtor's" is accordingly used not to clarify that it is the debtor's property that is exempt but to do some other semantic work, such as set a cap on the value of the debtor's interest that can be exempted. *See id.* §522(d)(1)-(6), (8) (with trivial variations, each exempting "[t]he debtor's interest, not to exceed" a specific dollar amount, in certain property). That phrase is unnecessary in the retirement-funds exemption because the relevant cap is

contained elsewhere, in §522(n).[19] *See City of Columbus* v. *Ours Garage & Wrecker Serv., Inc.*, 536 U.S. 424, 436 (2002) (the presumption "that the presence of a phrase in one provision and its absence in another reveals Congress' design ... grows weaker with each difference in the formulation of the provisions under inspection").

Finally, even if the statute permitted the debtor to exempt his or her interest in someone else's retirement funds, that would not help petitioners because, as the court of appeals held, "the money in [an] inherited IRA d[oes] not represent *anyone's* retirement funds." Pet. App. 4a; *see id.* at 29a. When petitioners filed for bankruptcy, the inherited IRA contained neither petitioners' nor the original owner's retirement funds. Ms. Heffron had died, and could no longer use the money during her retirement. And, for the reasons described above, the money in the inherited IRA was not set aside for petitioners' retirement. By the time of bankruptcy, the funds thus were no longer resources "set aside for the day when an individual stops working." Pet. Br. 20.

B. Petitioners' Speculation As To Why Congress Would Exempt Inherited IRAs Is Unfounded

Working from the incorrect premise that the statutory text is "unambiguous[ly]" in their favor (Br. 23-

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[19] Petitioners also point (at 33-34) to language in two exemptions limiting the exemptions to property "use[d]" by the debtor or debtor's dependents. *See* 11 U.S.C. § 522(d)(1), (3). But, as already discussed, *see supra* pp. 26-28, whether funds are "retirement funds" turns not on the actual use of the funds, but on the objective characteristics of the account in which they are held.

24), petitioners offer a series of defensive arguments as to why their reading of the text is not absurd. These arguments are fundamentally irrelevant: Even if it would not be absurd to exempt inherited IRAs in bankruptcy, the traditional tools of statutory interpretation described in Part I (including an understanding of the purpose of the exemptions generally and the retirement-funds exemption specifically) make clear that is not what Congress did. In any event, each argument fails on its own terms.

First, petitioners maintain (at 24-26) that exempting inherited IRAs is consistent with Congress's intent to expand bankruptcy protection for "'tax-favored retirement accounts.'" That argument merely begs the question *which* accounts Congress intended to exempt in bankruptcy. And for the reasons explained above, text, structure, purpose, and precedent all compel the result that inherited IRAs are not protected, which is sensible given that they are not vehicles for the beneficiary's retirement savings.[20]

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[20] Petitioners point (at 25-26) to ways in which owners of traditional or Roth IRAs can use those funds for non-retirement purposes, apparently in an effort to blur the line between those accounts and inherited IRAs. But this Court rejected a virtually identical line of argument in *Rousey*, explaining that the exceptions permitting immediate use of money in a traditional IRA are "narrow," "limited in amount and scope," and the "exception, rather than the rule." 544 U.S. at 332-333; *see id.* at 328 n.3. Those exceptions, in other words, did not alter the basic character of a traditional IRA, which remains a retirement vehicle. Similar analysis likely would apply to a Roth IRA, as explained above. *See supra* pp. 31-32. But those accounts are nothing like an inherited IRA in crucial respects: All funds in an inherited IRA are available at any time for a beneficiary's "unrestricted use," *Rousey*, 544 U.S. at 328 n.3, regardless of age, retirement status, or the pur-

For similar reasons, Congress's decision to link "bankruptcy exemption to tax exemption" (Pet. Br. 24) was a "logical" way of identifying a range of potential accounts to be exempt, but Congress added a separate "retirement funds" limitation to ensure that only retirement savings would be exempt. If Congress had intended to exempt money based only on tax-exempt status, it could have simply exempted the accounts themselves, or any "money" or "funds" held within them. Instead, it extended protection only to "retirement funds" held in tax-exempt accounts.

Second, petitioners argue (at 26) that interpreting the retirement-funds exemption to cover inherited IRAs furthers Congress's objective, expressed in statutes outside the Bankruptcy Code, to "mak[e] inherited IRAs available to beneficiaries as long-term financial planning tools." But the text of the retirement-funds exemption does not cover "long-term financial planning tools," even those tools that could be used, as nearly all can, "as a means of funding ... retirement[]." *Id.* It covers "retirement funds," to the extent those funds are in a covered tax-exempt account.

In essence, petitioners' argument is that the minimum distribution rules of inherited IRAs as a practical matter may permit some beneficiaries (with savvy accountants or lawyers) to receive distributions in their retirement years.[21] But there is no evidence that Con-

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pose of the withdrawal, and the beneficiary must begin to withdraw the funds promptly rather than holding them in the account for retirement.

[21] Contrary to petitioners' characterization of the opinion below (Br. 39-40), the court of appeals understood that for some in-

gress expected or intended that feature of these accounts to enable beneficiaries to use inherited IRAs to "fund[] their own retirement." Pet. Br. 28. Indeed, that position is impossible to reconcile with at least two decisions Congress has made with respect to inherited IRAs: its decision to forbid non-spousal beneficiaries from rolling over an inherited IRA into the beneficiary's own IRA (thus barring a beneficiary from using the funds for his or her own retirement) and its decision to require beneficiaries to begin taking distributions (thus depleting the account principal) without regard to the beneficiary's age or employment status. *See supra* pp. 14-16; Pet. Br. 9-10 (acknowledging these features of an inherited IRA).

Third, petitioners suggest (at 28) that interpreting the retirement-funds exemption to cover inherited IRAs "serves the government's substantial interest in encouraging individuals to save for retirement." But it is sheer speculation that protecting inherited IRAs in the hands of a beneficiary from creditors in bankruptcy would affect the original owner's incentives to invest, particularly given that an owner worried about a spendthrift or careless beneficiary (who might be more likely to wind up in bankruptcy) would understand that the beneficiary could withdraw the entire balance of the inherited IRA at any time and for any purpose. Beyond that, there is no evidence this theoretical incentive played any role in Congress's decision about the scope of the retirement-funds exemption—a provision that is part of a statutory scheme that carefully balances the goals of ensuring that a debtor is not deprived of

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herited IRAs, distribution payouts will be made over a "longer" period of time than five years. Pet. App. 2a.

property essential to his or her basic needs and ensuring that creditors receive fair treatment.

Fourth, as "[p]erhaps the best evidence that it is not absurd ... to exempt inherited IRAs," petitioners point (at 29) to the "seven States [that] have enacted exemptions that contain specific language covering inherited IRAs." The use of "specific language" to exempt inherited IRAs under state law, however, concretely illustrates why the language Congress used in §522 (with no reference to inheritance or inherited retirement accounts) does not reach inherited IRAs.[22]

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[22] *See* Alaska Stat. §09.38.017(a)(3) (exempting the "interest of a beneficiary in ... a retirement plan if the beneficiary acquired the interest as a result of the death of an individual"); Ariz. Rev. Stat. Ann. §33-1126(B) (exempting "[a]ny money ... payable to a ... beneficiary of, or any interest of any ... beneficiary in, a retirement plan ... whether the beneficiary's interest arises by inheritance ... or otherwise"); Fla. Stat. §222.21(2)(a), (c) (exempting "any money ... payable to ... a beneficiary from, or any interest of any ... beneficiary in, a fund or account ... if the fund or account is" tax-exempt under §408 of the Tax Code, and providing that money "does not cease to be exempt" after transfer to "an inherited individual retirement account"); Mo. Rev. Stat. §513.430(1)(10)(f) (exempting "[a]ny money ... payable to a ... beneficiary from, or any interest of any ... beneficiary in, a retirement plan, ... including an inherited account or plan" that is tax-exempt, "whether such ... beneficiary's interest arises by inheritance ... or otherwise"); N.C. Gen. Stat. §1C-1601(a)(9) (exempting certain "[i]ndividual retirement plans" and providing that "[a]ny money or other assets or any interest in any such plan remains exempt after an individual's death if held by one or more subsequent beneficiaries"); Ohio Rev. Code Ann. §2329.66(A)(10)(e) (exempting "[a] person's rights to or interests in any assets held in, or to directly or indirectly receive any payment or benefit under, any individual retirement account ... that a decedent, upon or by reason of the decedent's death, directly or indirectly left to or for the benefit of the person"); Tex. Prop. Code Ann. §42.0021(a) (exempting "a person's right to the

And, by design of bankruptcy law, States may make different choices from the federal government regarding the scope of exempted property. *See* López, *State Homestead Exemptions and Bankruptcy Law: Is It Time for Congress To Close the Loophole?*, 7 Rutgers Bus. L.J. 143, 145 (2010) ("Congress left in place the ability of states to opt out of the federal exemptions and provide their own state citizens with greater or lesser protection than that available under federal bankruptcy law with regard to ... property exempted from attachment in bankruptcy cases."). States can, and sometimes do, provide far more generous exemptions than those available under federal bankruptcy law; the unlimited homestead exemption available in some States is a well-known example. *See id.* at 165. That a handful of States have seen fit to exempt inherited IRAs under state law hardly shows that such an exemption coheres with the balance Congress struck in the federal bankruptcy exemptions.

Finally, petitioners argue (at 30) that exempting inherited IRAs furthers the purpose of "provid[ing] a uniform exemption across the federal and state exemption regimes." That argument is doubly flawed. To begin with, the exemption scheme is not meant to provide uniformity. As explained above, Congress has allowed States to "opt out" of the federal bankruptcy exemption scheme entirely and require their citizens to select only from applicable state and federal non-bankruptcy exemptions, *Owen* v. *Owen*, 500 U.S. 305, 308 (1991), with the result that exemptions can vary

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assets held in or to receive payments ... under ... an individual retirement account[,] ... including an inherited individual retirement account").

widely depending on the debtor's residence. It is true that, with respect to the retirement-funds exemption, Congress chose to extend protection even to debtors residing in States that had opted out of the federal scheme. But that means only that Congress intended all debtors to be able to avail themselves of the retirement-funds exemption *when it applies*. It says nothing about the scope of the exemption or how the phrase "retirement funds" should be construed. For the reasons given above, application of the normal tools of statutory construction readily leads to the conclusion that funds in inherited IRAs are not "retirement funds."

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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APPENDIX

11 U.S.C. §522—EXEMPTIONS

(a) In this section—

(1) "dependent" includes spouse, whether or not actually dependent; and

(2) "value" means fair market value as of the date of the filing of the petition or, with respect to property that becomes property of the estate after such date, as of the date such property becomes property of the estate.

(b) (1) Notwithstanding section 541 of this title, an individual debtor may exempt from property of the estate the property listed in either paragraph (2) or, in the alternative, paragraph (3) of this subsection. In joint cases filed under section 302 of this title and individual cases filed under section 301 or 303 of this title by or against debtors who are husband and wife, and whose estates are ordered to be jointly administered under Rule 1015(b) of the Federal Rules of Bankruptcy Procedure, one debtor may not elect to exempt property listed in paragraph (2) and the other debtor elect to exempt property listed in paragraph (3) of this subsection. If the parties cannot agree on the alternative to be elected, they shall be deemed to elect paragraph (2), where such election is permitted under the law of the jurisdiction where the case is filed.

(2) Property listed in this paragraph is property that is specified under subsection (d), unless the State law that is applicable to the debtor under paragraph (3)(A) specifically does not so authorize.

(3) Property listed in this paragraph is—

(A) subject to subsections (*o*) and (p), any property that is exempt under Federal law, other than subsection (d) of this section, or State or local law

that is applicable on the date of the filing of the petition to the place in which the debtor's domicile has been located for the 730 days immediately preceding the date of the filing of the petition or if the debtor's domicile has not been located in a single State for such 730-day period, the place in which the debtor's domicile was located for 180 days immediately preceding the 730-day period or for a longer portion of such 180-day period than in any other place;

(B) any interest in property in which the debtor had, immediately before the commencement of the case, an interest as a tenant by the entirety or joint tenant to the extent that such interest as a tenant by the entirety or joint tenant is exempt from process under applicable nonbankruptcy law; and

(C) retirement funds to the extent that those funds are in a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986.

If the effect of the domiciliary requirement under subparagraph (A) is to render the debtor ineligible for any exemption, the debtor may elect to exempt property that is specified under subsection (d).

(4) For purposes of paragraph (3)(C) and subsection (d)(12), the following shall apply:

(A) If the retirement funds are in a retirement fund that has received a favorable determination under section 7805 of the Internal Revenue Code of 1986, and that determination is in effect as of the date of the filing of the petition in a case under this title, those funds shall be presumed to be exempt from the estate.

(B) If the retirement funds are in a retirement fund that has not received a favorable determination under such section 7805, those funds are exempt from the estate if the debtor demonstrates that—

(i) no prior determination to the contrary has been made by a court or the Internal Revenue Service; and

(ii) (I) the retirement fund is in substantial compliance with the applicable requirements of the Internal Revenue Code of 1986; or

(II) the retirement fund fails to be in substantial compliance with the applicable requirements of the Internal Revenue Code of 1986 and the debtor is not materially responsible for that failure.

(C) A direct transfer of retirement funds from 1 fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986, under section 401(a)(31) of the Internal Revenue Code of 1986, or otherwise, shall not cease to qualify for exemption under paragraph (3)(C) or subsection (d)(12) by reason of such direct transfer.

(D) (i) Any distribution that qualifies as an eligible rollover distribution within the meaning of section 402(c) of the Internal Revenue Code of 1986 or that is described in clause (ii) shall not cease to qualify for exemption under paragraph (3)(C) or subsection (d)(12) by reason of such distribution.

(ii) A distribution described in this clause is an amount that—

(I) has been distributed from a fund or account that is exempt from taxation under

section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986; and

(II) to the extent allowed by law, is deposited in such a fund or account not later than 60 days after the distribution of such amount.

(c) Unless the case is dismissed, property exempted under this section is not liable during or after the case for any debt of the debtor that arose, or that is determined under section 502 of this title as if such debt had arisen, before the commencement of the case, except—

(1) a debt of a kind specified in paragraph (1) or (5) of section 523(a) (in which case, notwithstanding any provision of applicable nonbankruptcy law to the contrary, such property shall be liable for a debt of a kind specified in such paragraph);

(2) a debt secured by a lien that is—

(A) (i) not avoided under subsection (f) or (g) of this section or under section 544, 545, 547, 548, 549, or 724(a) of this title; and

(ii) not void under section 506(d) of this title; or

(B) a tax lien, notice of which is properly filed;

(3) a debt of a kind specified in section 523(a)(4) or 523(a)(6) of this title owed by an institution-affiliated party of an insured depository institution to a Federal depository institutions regulatory agency acting in its capacity as conservator, receiver, or liquidating agent for such institution; or

(4) a debt in connection with fraud in the obtaining or providing of any scholarship, grant, loan, tuition, dis-

count, award, or other financial assistance for purposes of financing an education at an institution of higher education (as that term is defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001)).

(d) The following property may be exempted under subsection (b)(2) of this section:

(1) The debtor's aggregate interest, not to exceed $22,975[1] in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence, or in a burial plot for the debtor or a dependent of the debtor.

(2) The debtor's interest, not to exceed $3,675[1] in value, in one motor vehicle.

(3) The debtor's interest, not to exceed $575[1] in value in any particular item or $12,250[1] in aggregate value, in household furnishings, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments, that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

(4) The debtor's aggregate interest, not to exceed $1,550[1] in value, in jewelry held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

(5) The debtor's aggregate interest in any property, not to exceed in value $1,225[1] plus up to $11,500[1] of any unused amount of the exemption provided under paragraph (1) of this subsection.

(6) The debtor's aggregate interest, not to exceed $2,300[1] in value, in any implements, professional books,

or tools, of the trade of the debtor or the trade of a dependent of the debtor.

(7) Any unmatured life insurance contract owned by the debtor, other than a credit life insurance contract.

(8) The debtor's aggregate interest, not to exceed in value $12,250[1] less any amount of property of the estate transferred in the manner specified in section 542(d) of this title, in any accrued dividend or interest under, or loan value of, any unmatured life insurance contract owned by the debtor under which the insured is the debtor or an individual of whom the debtor is a dependent.

(9) Professionally prescribed health aids for the debtor or a dependent of the debtor.

(10) The debtor's right to receive—

(A) a social security benefit, unemployment compensation, or a local public assistance benefit;

(B) a veterans' benefit;

(C) a disability, illness, or unemployment benefit;

(D) alimony, support, or separate maintenance, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

(E) a payment under a stock bonus, pension, profitsharing, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor, unless—

(i) such plan or contract was established by or under the auspices of an insider that em-

ployed the debtor at the time the debtor's rights under such plan or contract arose;

(ii) such payment is on account of age or length of service; and

(iii) such plan or contract does not qualify under section 401(a), 403(a), 403(b), or 408 of the Internal Revenue Code of 1986.

(11) The debtor's right to receive, or property that is traceable to—

(A) an award under a crime victim's reparation law;

(B) a payment on account of the wrongful death of an individual of whom the debtor was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

(C) a payment under a life insurance contract that insured the life of an individual of whom the debtor was a dependent on the date of such individual's death, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

(D) a payment, not to exceed $22,975,[1] on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of whom the debtor is a dependent; or

(E) a payment in compensation of loss of future earnings of the debtor or an individual of whom the debtor is or was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

(12) Retirement funds to the extent that those funds are in a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986.

(e) A waiver of an exemption executed in favor of a creditor that holds an unsecured claim against the debtor is unenforceable in a case under this title with respect to such claim against property that the debtor may exempt under subsection (b) of this section. A waiver by the debtor of a power under subsection (f) or (h) of this section to avoid a transfer, under subsection (g) or (i) of this section to exempt property, or under subsection (i) of this section to recover property or to preserve a transfer, is unenforceable in a case under this title.

(f) (1) Notwithstanding any waiver of exemptions but subject to paragraph (3), the debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled under subsection (b) of this section, if such lien is—

(A) a judicial lien, other than a judicial lien that secures a debt of a kind that is specified in section 523(a)(5); or

(B) a nonpossessory, nonpurchase-money security interest in any—

(i) household furnishings, household goods, wearing apparel, appliances, books, animals, crops, musical instruments, or jewelry that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor;

(ii) implements, professional books, or tools, of the trade of the debtor or the trade of a dependent of the debtor; or

(iii) professionally prescribed health aids for the debtor or a dependent of the debtor.

(2) (A) For the purposes of this subsection, a lien shall be considered to impair an exemption to the extent that the sum of—

(i) the lien;

(ii) all other liens on the property; and

(iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens.

(B) In the case of a property subject to more than 1 lien, a lien that has been avoided shall not be considered in making the calculation under subparagraph (A) with respect to other liens.

(C) This paragraph shall not apply with respect to a judgment arising out of a mortgage foreclosure.

(3) In a case in which State law that is applicable to the debtor—

(A) permits a person to voluntarily waive a right to claim exemptions under subsection (d) or prohibits a debtor from claiming exemptions under subsection (d); and

(B) either permits the debtor to claim exemptions under State law without limitation in amount, except to the extent that the debtor has permitted the fixing of a consensual lien on any property or

prohibits avoidance of a consensual lien on property otherwise eligible to be claimed as exempt property;

the debtor may not avoid the fixing of a lien on an interest of the debtor or a dependent of the debtor in property if the lien is a nonpossessory, nonpurchase-money security interest in implements, professional books, or tools of the trade of the debtor or a dependent of the debtor or farm animals or crops of the debtor or a dependent of the debtor to the extent the value of such implements, professional books, tools of the trade, animals, and crops exceeds $6,225[1].

(4) (A) Subject to subparagraph (B), for purposes of paragraph (1)(B), the term "household goods" means—

(i) clothing;

(ii) furniture;

(iii) appliances;

(iv) 1 radio;

(v) 1 television;

(vi) 1 VCR;

(vii) linens;

(viii) china;

(ix) crockery;

(x) kitchenware;

(xi) educational materials and educational equipment primarily for the use of minor dependent children of the debtor;

(xii) medical equipment and supplies;

(xiii) furniture exclusively for the use of minor children, or elderly or disabled dependents of the debtor;

(xiv) personal effects (including the toys and hobby equipment of minor dependent children and wedding rings) of the debtor and the dependents of the debtor; and

(xv) 1 personal computer and related equipment.

(B) The term "household goods" does not include—

(i) works of art (unless by or of the debtor, or any relative of the debtor);

(ii) electronic entertainment equipment with a fair market value of more than $650[1] in the aggregate (except 1 television, 1 radio, and 1 VCR);

(iii) items acquired as antiques with a fair market value of more than $650[1] in the aggregate;

(iv) jewelry with a fair market value of more than $650[1] in the aggregate (except wedding rings); and

(v) a computer (except as otherwise provided for in this section), motor vehicle (including a tractor or lawn tractor), boat, or a motorized recreational device, conveyance, vehicle, watercraft, or aircraft.

(g) Notwithstanding sections 550 and 551 of this title, the debtor may exempt under subsection (b) of this section property that the trustee recovers under section 510(c)(2), 542, 543, 550, 551, or 553 of this title, to the

extent that the debtor could have exempted such property under subsection (b) of this section if such property had not been transferred, if—

(1) (A) such transfer was not a voluntary transfer of such property by the debtor; and

(B) the debtor did not conceal such property; or

(2) the debtor could have avoided such transfer under subsection (f)(1)(B) of this section.

(h) The debtor may avoid a transfer of property of the debtor or recover a setoff to the extent that the debtor could have exempted such property under subsection (g)(1) of this section if the trustee had avoided such transfer, if—

(1) such transfer is avoidable by the trustee under section 544, 545, 547, 548, 549, or 724(a) of this title or recoverable by the trustee under section 553 of this title; and

(2) the trustee does not attempt to avoid such transfer.

(i) (1) If the debtor avoids a transfer or recovers a setoff under subsection (f) or (h) of this section, the debtor may recover in the manner prescribed by, and subject to the limitations of, section 550 of this title, the same as if the trustee had avoided such transfer, and may exempt any property so recovered under subsection (b) of this section.

(2) Notwithstanding section 551 of this title, a transfer avoided under section 544, 545, 547, 548, 549, or 724(a) of this title, under subsection (f) or (h) of this section, or property recovered under section 553 of this title, may be preserved for the benefit of the debtor to the extent that the debtor may exempt such property

under subsection (g) of this section or paragraph (1) of this subsection.

(j) Notwithstanding subsections (g) and (i) of this section, the debtor may exempt a particular kind of property under subsections (g) and (i) of this section only to the extent that the debtor has exempted less property in value of such kind than that to which the debtor is entitled under subsection (b) of this section.

(k) Property that the debtor exempts under this section is not liable for payment of any administrative expense except—

(1) the aliquot share of the costs and expenses of avoiding a transfer of property that the debtor exempts under subsection (g) of this section, or of recovery of such property, that is attributable to the value of the portion of such property exempted in relation to the value of the property recovered; and

(2) any costs and expenses of avoiding a transfer under subsection (f) or (h) of this section, or of recovery of property under subsection (i)(1) of this section, that the debtor has not paid.

(*l*) The debtor shall file a list of property that the debtor claims as exempt under subsection (b) of this section. If the debtor does not file such a list, a dependent of the debtor may file such a list, or may claim property as exempt from property of the estate on behalf of the debtor. Unless a party in interest objects, the property claimed as exempt on such list is exempt.

(m) Subject to the limitation in subsection (b), this section shall apply separately with respect to each debtor in a joint case.

(n) For assets in individual retirement accounts described in section 408 or 408A of the Internal Revenue

Code of 1986, other than a simplified employee pension under section 408(k) of such Code or a simple retirement account under section 408(p) of such Code, the aggregate value of such assets exempted under this section, without regard to amounts attributable to rollover contributions under section 402(c), 402(e)(6), 403(a)(4), 403(a) (5), and 403(b)(8) of the Internal Revenue Code of 1986, and earnings thereon, shall not exceed $1,245,475[1] in a case filed by a debtor who is an individual, except that such amount may be increased if the interests of justice so require.

(*o*) For purposes of subsection (b)(3)(A), and notwithstanding subsection (a), the value of an interest in—

(1) real or personal property that the debtor or a dependent of the debtor uses as a residence;

(2) a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence;

(3) a burial plot for the debtor or a dependent of the debtor; or

(4) real or personal property that the debtor or a dependent of the debtor claims as a homestead;

shall be reduced to the extent that such value is attributable to any portion of any property that the debtor disposed of in the 10-year period ending on the date of the filing of the petition with the intent to hinder, delay, or defraud a creditor and that the debtor could not exempt, or that portion that the debtor could not exempt, under subsection (b), if on such date the debtor had held the property so disposed of.

(p) (1) Except as provided in paragraph (2) of this subsection and sections 544 and 548, as a result of electing under subsection (b)(3)(A) to exempt property under State or local law, a debtor may not exempt any

amount of interest that was acquired by the debtor during the 1215-day period preceding the date of the filing of the petition that exceeds in the aggregate $155,675[1] in value in—

(A) real or personal property that the debtor or a dependent of the debtor uses as a residence;

(B) a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence;

(C) a burial plot for the debtor or a dependent of the debtor; or

(D) real or personal property that the debtor or dependent of the debtor claims as a homestead.

(2) (A) The limitation under paragraph (1) shall not apply to an exemption claimed under subsection (b)(3)(A) by a family farmer for the principal residence of such farmer.

(B) For purposes of paragraph (1), any amount of such interest does not include any interest transferred from a debtor's previous principal residence (which was acquired prior to the beginning of such 1215-day period) into the debtor's current principal residence, if the debtor's previous and current residences are located in the same State.

(q) (1) As a result of electing under subsection (b)(3)(A) to exempt property under State or local law, a debtor may not exempt any amount of an interest in property described in subparagraphs (A), (B), (C), and (D) of subsection (p)(1) which exceeds in the aggregate $155,675[1] if—

(A) the court determines, after notice and a hearing, that the debtor has been convicted of a fel-

ony (as defined in section 3156 of title 18), which under the circumstances, demonstrates that the filing of the case was an abuse of the provisions of this title; or

(B) the debtor owes a debt arising from—

(i) any violation of the Federal securities laws (as defined in section 3(a)(47) of the Securities Exchange Act of 1934), any State securities laws, or any regulation or order issued under Federal securities laws or State securities laws;

(ii) fraud, deceit, or manipulation in a fiduciary capacity or in connection with the purchase or sale of any security registered under section 12 or 15(d) of the Securities Exchange Act of 1934 or under section 6 of the Securities Act of 1933;

(iii) any civil remedy under section 1964 of title 18; or

(iv) any criminal act, intentional tort, or willful or reckless misconduct that caused serious physical injury or death to another individual in the preceding 5 years.

(2) Paragraph (1) shall not apply to the extent the amount of an interest in property described in subparagraphs (A), (B), (C), and (D) of subsection (p)(1) is reasonably necessary for the support of the debtor and any dependent of the debtor.

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[1] Dollar amount as adjusted by the Judicial Conference of the United States. See Adjustment of Dollar Amounts notes set out under this section and 11 U.S.C. § 104.

REPLY BRIEF

RECORD
AND
BRIEFS

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In the Supreme Court of the United States

BRANDON C. CLARK AND HEIDI K. HEFFRON-CLARK,
PETITIONERS

v.

WILLIAM J. RAMEKER, TRUSTEE, ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

REPLY BRIEF FOR THE PETITIONERS

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In the Supreme Court of the United States

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BRANDON C. CLARK AND HEIDI K. HEFFRON-CLARK, PETITIONERS

v.

WILLIAM J. RAMEKER, TRUSTEE, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

REPLY BRIEF FOR THE PETITIONERS

It is exceptionally rare for a respondent in this Court to make no effort to defend the reasoning of the decision under review. Yet that is precisely what has happened in this case. Having touted its "persuasive[]" and "cogent" reasoning when they were opposing certiorari, Br. in Opp. 2, 16, respondents do not even cite the court of appeals' opinion in the argument section of their merits brief, save for two passing references buried at the end. See Br. 49, 51 n.21. Respondents' decision to abandon any defense of the court of appeals' reasoning was a wise one, because that reasoning is simply indefensible. In holding that "retirement funds" covers only funds that have been set aside for the debtor's own retirement, the court of appeals read into the "retirement funds" exemp-

tion an additional limitation that is nowhere to be found in the statutory text. And the court of appeals' policy-driven conclusion that the exemption excludes inherited IRAs was based on a series of erroneous assumptions concerning those accounts.

Instead of defending the court of appeals' interpretation of the "retirement funds" exemption, respondents offer an elaborate interpretation of their own. They define "retirement funds" to mean "money * * * held in a covered account that Congress has established for retirement savings, as made clear by objective rules governing the account that help to ensure that the money is used for such retirement purposes." Br. 26 (emphasis omitted). But that interpretation, under which funds must be in a retirement account that not only is tax-exempt but also possesses an amorphous set of additional "objective features," suffers from the same fundamental flaw as the court of appeals' interpretation: it has no basis in the language that Congress actually used.

Conveniently, the only effect of respondents' interpretation of "retirement funds" would seemingly be to deny bankruptcy exemption to inherited IRAs. This Court has made clear, however, that it "do[es] not 'interpret' statutes by gerrymandering them [in a way] that happen[s] to describe a party's case." *United States* v. *Apel*, No. 12-1038 (Feb. 26, 2014), slip op. 13. And it stretches the limits of credulity to believe, as respondents suggest, that Congress included the phrase "retirement funds" for the sole purpose of excluding inherited IRAs. Respondents cannot point to even a scintilla of legislative history that suggests Congress had that purpose affirmatively in mind. If Congress had intended to exclude inherited IRAs, it surely would have done so clearly and expressly, rather than by means of a ques-

tionable negative inference from the phrase "retirement funds."

The correct disposition of this case is simple. Particularly where, as here, there is no legislative history directly on point, "[t]he role of this Court is to apply the statute as it is written—even if we think some other approach might accord with good policy." *Sandifer* v. *United States Steel Corp.*, 134 S. Ct. 870, 878 (2014) (citation omitted). The plain language of the "retirement funds" exemption categorically exempts funds that have been set aside for retirement in one of the enumerated types of tax-exempt retirement accounts. Respondents do not dispute that the funds contained in the inherited IRA at issue here were set aside for retirement when they were initially deposited in an individual retirement account. Nor do they dispute that the account remained an individual retirement account, and retained its tax-exempt status, when it passed to Mrs. Heffron-Clark upon the death of her mother.

That is all that is required to come within the broad scope of the "retirement funds" exemption. And while respondents fall back time and again on conjectural policy arguments, it is perfectly reasonable to construe the exemption to cover inherited IRAs—as evidenced by the fact that several States have specifically made that policy judgment in recent years. This Court should reject respondents' efforts to read an atextual exception into the categorical exemption that Congress actually wrote, and it should reverse the judgment of the court of appeals.

A. The Plain Text Of The 'Retirement Funds' Exemption Covers Inherited IRAs

1. Section 522(b)(3)(C) and (d)(12) of the Bankruptcy Code exempts from the bankruptcy estate "retirement funds to the extent that those funds are in a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986." 11 U.S.C. 522(b)(3)(C), (d)(12). That provision categorically exempts from the estate funds that have been set aside for retirement in one of the enumerated types of tax-exempt retirement plans or accounts. To the extent respondents argue that the text of the statute does not support that straightforward interpretation, their arguments are uniformly unavailing.

a. Respondents fault petitioners (Br. 42-44) for reading the components of the "retirement funds" exemption together, instead of treating the phrase "retirement funds" and the "to the extent that" clause as discrete and independent requirements. But it is a bedrock principle of statutory interpretation that courts must "read statutes as a whole," rather than "construe[ing] statutory phrases in isolation." *United States* v. *Morton*, 467 U.S. 822, 828 (1984).

That principle applies with particular force here, given the way the "retirement funds" exemption is structured: *i.e.*, with a broad category, "retirement funds," that is immediately followed by a narrowing "to the extent that" clause. As this Court has explained, the phrase "to the extent that" is one "of limitation." *John Hancock Mutual Life Insurance Co.* v. *Harris Trust & Savings Bank*, 510 U.S. 86, 104-105 (1993). That phrase "make[s] clear that[,] to some extent[,] [items] that would otherwise be included in a general category were meant to be excluded." *Varity Corp.* v. *Howe*, 516 U.S.

489, 536 (1996) (Thomas, J., dissenting) (internal quotation marks, citation, and emphasis omitted).

As respondents concede (Br. 20, 25-26), the ordinary meaning of "retirement funds" is funds set aside for retirement. When the statute is read as a unitary whole, it naturally accords the ordinary meaning to that phrase: "retirement funds" covers the broad category of funds that have been set aside for retirement, a category that is then winnowed down by the statute's "to the extent that" clause. If, for example, the statute exempted "retirement funds" standing alone, funds in a taxable investment account would arguably constitute "retirement funds" if the account holder had placed the funds in the account for use in retirement. But those funds are indisputably excluded from the "retirement funds" exemption by virtue of the "to the extent that" clause, because a taxable investment account is not one of the enumerated types of tax-exempt retirement accounts.

To be sure, it may be that the phrase "retirement funds" does not independently *exclude* anything from the scope of the statute. Because the vast majority of the accounts covered by the enumerated provisions of the Internal Revenue Code in the "to the extent that" clause are retirement accounts, funds that have been set aside in those accounts necessarily fall within the statute's more general category of "retirement funds." But it does not follow that the phrase "retirement funds" somehow lacks meaning or that the word "retirement" is surplusage. Congress is under no obligation to draft statutes with maximum economy; in order to clarify or remove doubt about an issue, Congress sometimes includes phrases in statutes that may not be strictly necessary, and such phrases are not superfluous. See, *e.g.*, *Marx* v. *General Revenue Corp.*, 133 S. Ct. 1166, 1177 (2013); *Ali* v. *Federal Bureau of Prisons*, 552 U.S. 214,

226 (2008); *Fort Stewart Schools* v. *FLRA*, 495 U.S. 641, 646 (1990). As petitioners have explained, the word "retirement" in the phrase "retirement funds" at a minimum serves just such a clarifying function, ensuring that only funds that have been set aside in retirement accounts are exempted. See Pet. Br. 22-23.

In any event, even if the word "retirement" were surplusage, "[t]he canon against surplusage is not an absolute rule." *Marx*, 133 S. Ct. at 1177. Where the text of a statute is plain but includes surplus language, a court should prefer the plain meaning over an interpretation that eliminates the surplusage at the plain meaning's expense. See *Lamie* v. *United States Trustee*, 540 U.S. 526, 536 (2004); Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* § 26, at 176 (2012). Here, the meaning of the statutory text is clear, and petitioners' interpretation must be preferred over an interpretation that would engraft a nebulous and atextual limitation on the statute. See pp. 13-22, *infra*. Even if the rule against surplusage were available here, therefore, it would be inappropriate to apply it, because the broad language of the "retirement funds" exemption is "most consistent and coherent when [it] is read to mean what it literally says." *Ali*, 552 U.S. at 227-228.

b. Petitioners' interpretation of the "retirement funds" exemption is confirmed by Congress's decision to link bankruptcy exemption to tax exemption by incorporating by reference provisions of the Internal Revenue Code. Respondents contend that it is a "well-accepted interpretive principle" that "characterizations in the Internal Revenue Code are not dispositive in the bankruptcy context." Br. 42 n.16 (internal quotation marks and citation omitted). The sole case respondents cite for that principle, however, expressly distinguishes between cases in which a bankruptcy provision does *not* incorporate

an Internal Revenue Code provision (where that principle applies), and cases in which it does (where the incorporated provision obviously informs the interpretation of the bankruptcy provision). See *United States* v. *Reorganized CF&I Fabricators of Utah, Inc.*, 518 U.S. 213, 219-224 (1996). Here, it is natural to read the "retirement funds" provision to exempt all funds that have been set aside in one of the enumerated types of retirement accounts that are tax-exempt under the incorporated Internal Revenue Code provisions.

As petitioners have explained, a National Bankruptcy Review Commission report suggests that Congress linked bankruptcy exemption to tax exemption in order to create uniformity across federal law regarding which types of accounts should be considered retirement accounts subject to special treatment. See Pet. Br. 24-25. Respondents contend (Br. 43-44) that this Court may infer from the fact that the statute includes the phrase "retirement funds," whereas the Commission's proposal contained the phrase "[a]ll funds," that Congress altered the language in order to deny exemption to inherited IRAs. But the Commission's report indicates that the Commission itself attached no significance to that purported distinction: the report makes clear that "exempting *retirement funds* in bankruptcy to the extent they are exempt under federal tax laws" would mean that "*all funds*" in the enumerated tax-exempt accounts would be exempt in bankruptcy. National Bankruptcy Review Commission, *Bankruptcy: The Next Twenty Years (National Bankruptcy Review Commission Final Report)* § 1.2.5, at 139, 141 (1997) (emphases added).

2. Under petitioners' straightforward interpretation, funds in an inherited IRA unquestionably qualify for the "retirement funds" exemption. Respondents do not dispute that an inherited IRA is exempt from taxa-

tion under Section 408 of the Internal Revenue Code, thereby satisfying the statute's "to the extent that" clause. See 26 U.S.C. 408(e)(1). Thus, although respondents contend that an inherited IRA "bear[s] none of the relevant hallmarks of accounts containing retirement funds," Br. 24, an inherited IRA in fact retains the *most* relevant hallmark of IRAs more generally: namely, that funds in the account grow tax-free and are taxed, if at all, only upon distribution.

Respondents also do not dispute that funds in an inherited IRA were set aside for retirement when they were initially deposited in an individual retirement account. Nor do respondents dispute that, when the initial owner dies and the account passes to a non-spouse beneficiary, the same funds remain in the same individual retirement account, which is then "treated as inherited." 26 U.S.C. 408(d)(3)(C)(ii). The funds are not withdrawn and deposited in a different account, nor do any new funds enter the account; instead, the exact same funds may remain in the exact same individual retirement account, where they continue to grow tax-free just like before. As such, funds in an inherited IRA constitute "retirement funds" within the meaning of Section 522.

Unable to dispute any of those propositions, respondents have little else to say. Respondents contend (Br. 45) that, although the same funds remain in the same tax-exempt individual retirement account, those funds nevertheless cease to be "retirement funds" when the initial owner dies. As support, respondents focus on the fact that the beneficiary may withdraw the funds and must begin taking minimum distributions, typically within a year of the initial owner's death. Of course, once a beneficiary withdraws funds from the account, they are no longer in the account, and thus no longer subject to the exemption. But for present purposes, the critical point is

this: at the time of withdrawal, regardless of whether the beneficiary or the initial owner withdraws the money (and regardless of the account holder's age or retirement status when he does so), the holder is drawing on "retirement funds" that have been set aside in an individual retirement account.

In a related vein, respondents insist that it does not matter that the funds were set aside for retirement by the initial owner, because they must be "*currently* 'set aside' for retirement." Br. 45. But that is just another way of saying that the funds must be intended to be used for the debtor's own retirement. That is because it is meaningless to talk about "setting aside" funds in an inherited IRA: having been "set aside" for retirement when they were deposited in an individual retirement account, the funds are not taken out and "set aside" elsewhere upon the initial owner's death. Instead, the funds remain in the same account, subject only to different contribution and distribution rules. When respondents talk about funds "currently being set aside," therefore, they are really talking about the purpose for which their holder intends to use them—a subjective inquiry which respondents urged at the certiorari stage, see, *e.g.*, Br. in Opp. 15, but from which they now understandably distance themselves. As petitioners have explained, such a subjective approach has no support in the text and is rife with difficulties in application. See Pet. Br. 42-44.

Finally on this point, respondents criticize petitioners (Br. 47) for relying on the "direct transfer" provision in Section 522(b)(4)(C). But that provision simply reaffirms that subsequent events do not affect the characterization of funds in a tax-exempt retirement account as "retirement funds" as long as they remain in such an account. See Pet. Br. 21-22. Respondents attempt to dispute that proposition by resorting to the legislative history, but

the statement they cite merely confirms that the provision was intended to address direct transfers from "a plan exempt from the bankruptcy estate to * * * another retirement plan exempt from the bankruptcy estate." 144 Cong. Rec. 20,701 (1998) (statement of Sen. Hatch). The "direct transfer" provision thus underscores what the language of the "retirement funds" exemption already makes plain: that the statute exempts funds at the point at which they have been set aside for retirement in a tax-exempt retirement account, for as long as they remain in such an account.

B. It Is Not Absurd To Interpret The 'Retirement Funds' Exemption To Cover Inherited IRAs

1. Where, as here, the statutory text is unambiguous, the inquiry is complete unless "the disposition required by the text" would be "absurd." *Lamie*, 540 U.S. at 534 (citation omitted). As a preliminary matter, respondents conspicuously do not argue that petitioners' interpretation is absurd. Nor could they colorably do so given that, in the last three years alone, legislators in seven States have specifically considered whether inherited IRAs should be exempt from debtors' bankruptcy estates—and concluded that they should. See Alaska Stat. § 09.38.017(a) (amended 2013); Ariz. Rev. Stat. § 33-1126(B) (amended 2011); Fla. Stat. § 222.21(2)(c) (amended 2011); Mo. Stat. § 513.430.1(10)(f) (amended 2013); N.C. Gen. Stat. § 1C-1601(a)(9) (amended 2013); Ohio Rev. Code § 2329.66(A)(10)(e) (amended 2012); Tex. Prop. Code § 42.0021(a) (amended 2011).

Perhaps for that reason, respondents do not seriously dispute that exempting inherited IRAs would be consistent with several legitimate legislative objectives: expanding bankruptcy protection for tax-exempt retirement accounts, making inherited IRAs available to bene-

ficiaries as long-term financial planning tools, encouraging individuals to save for retirement, and providing a uniform exemption across federal and state exemption regimes. See Pet. Br. 24-31. Instead, respondents merely argue (Br. 49-55) that it is "speculation" that Congress acted in furtherance of those objectives when it enacted the "retirement funds" exemption.

That is true enough, because there is no legislative history indicating that Congress specifically considered whether to exempt inherited IRAs. But that is precisely why the Court should decide this case based on the statutory language, without attempting to guess which side's policy arguments would have carried the day if Congress had focused on the issue. The existence of legitimate policy arguments on petitioners' side simply demonstrates that it is not absurd, and indeed entirely reasonable, to interpret the "retirement funds" exemption, consistent with its plain meaning, to cover inherited IRAs.

2. Insofar as respondents cast aspersions on the extent to which exempting inherited IRAs furthers particular legislative objectives, their arguments lack merit.

a. Respondents suggest (Br. 51-52) that exempting inherited IRAs does not further the objective of making those accounts available to beneficiaries as long-term financial planning tools (and even as a means of funding their own retirements). In particular, respondents emphasize that a beneficiary must take minimum distributions annually from the account. But they ignore that the minimum distribution rules for inherited IRAs, like those for a traditional IRA in the hands of its original owner, provide for actuarially based withdrawals that are specifically designed to extend the IRA, through retirement, to the beneficiary's death. See Pet. Br. 10. As petitioners have demonstrated, the long-term deferral of taxation and distribution permitted by those rules can

result in substantial growth of the funds in an inherited IRA over time. See *id.* at 27-28.

Respondents repeatedly elide that important feature of inherited IRAs with the misleading assertion that a beneficiary is not entitled to keep the funds set aside in an inherited IRA until retirement. See Br. 2, 19, 29, 33, 46. It is true that, because of mandatory distributions, a beneficiary is not entitled to keep all of the funds. But even without the help of "savvy accountants or lawyers," Br. 51, a beneficiary with a reasonable rate of return could easily end up with more in her inherited IRA when she reaches retirement than she had when she inherited the IRA in the first place. See Pet. Br. 27-28. Notably, when Congress enacted the "retirement funds" exemption in 2005, it did so against the backdrop of the required minimum distribution rules, which had been in place for over two decades. See *id.* at 27.

b. Respondents also suggest (Br. 52-53) that exempting inherited IRAs does not further the objective of encouraging individuals to save for retirement, because an individual who is concerned about a "spendthrift or careless beneficiary" would understand that the beneficiary could withdraw the funds. But that is a reason why such an individual would not name the beneficiary as a beneficiary in the first place. And while it may come as news to respondents, not everyone who goes into bankruptcy in the United States is "spendthrift or careless." Individuals will be more likely to save for retirement if they know that their intended beneficiaries will be able to enjoy any funds left over at the time of their death even if, through no "carelessness" of their own, they end up in bankruptcy. That legislative objective, along with the others set out above, illustrates that it is not absurd to interpret the "retirement funds" exemption to cover inherited IRAs.

C. Respondents' Contrary Interpretation Is Deeply Flawed

Rather than defending the court of appeals' definition of "retirement funds" as funds that have been set aside for the debtor's own retirement, respondents define "retirement funds" to mean "money * * * held in a covered account that Congress has established for retirement savings, as made clear by objective rules governing the account that help to ensure that the money is used for such retirement purposes." Br. 26 (emphasis omitted). Like the court of appeals' interpretation, respondents' interpretation is riddled with flaws and should be rejected.

1. Most obviously, respondents' interpretation has no basis in the text of the "retirement funds" exemption. Respondents concede (Br. 25-26) that the ordinary meaning of "retirement funds" is funds set aside for retirement. Rather than accepting that ordinary meaning as determinative, however, respondents engraft an additional limitation on that phrase, asserting that funds set aside for retirement are not "retirement funds" unless they are "being held in a tax-exempt account with objective features—for example, a restriction on or penalty for early withdrawal—to help ensure that money is, in fact, used for retirement purposes." Br. 28.

Where does that elaborate gloss come from? Respondents do not say. At one point, respondents imply that the "objective features" requirement can somehow be extracted from shared features of the tax-exempt retirement accounts enumerated in the "to the extent that" clause. Br. 28. But in the same breath, respondents admit that "most" but "not all" of the accounts covered by those provisions contain the "objective features" that they would seemingly require. Br. 20, 27, 28.

More fundamentally, the text of the statute affirmatively demonstrates why respondents' interpretation cannot be correct. Respondents contend that, to qualify for the "retirement funds" exemption, money must be in an account that *not only* is tax-exempt, *but also* "is structured to help ensure that money held in the account is actually set aside for the day when an individual stops working." Br. 28 (internal quotation marks and citation omitted). But a reader would search the text of the statute in vain for that additional requirement regarding the features of the account. To the contrary, in the text, Congress expressly identified the only "objective feature" relevant to application of the "retirement funds" exemption: *viz.*, that the account is "exempt from taxation" under one of the enumerated provisions. 11 U.S.C. 522(b)(3)(C), (d)(12).

At bottom, respondents' definition of "retirement funds" as money in accounts with "objective features" that "ensure that money is, in fact, used for retirement purposes," Br. 28, is just another way of saying, as the court of appeals did, that the funds must have been "set aside for a debtor's [own] retirement," Br. 3. As numerous lower courts have concluded, however, the "retirement funds" exemption "does not require that the funds in the retirement account be *the debtor's* retirement funds when the account was established": *i.e.*, funds that have been set aside for the debtor's own retirement. 4 Alan N. Resnick & Henry J. Sommer, *Collier on Bankruptcy* ¶ 522.10[9], at 522-92 (16th ed. 2013) (emphasis added); see Pet. Br. 32 n.12 (citing cases).

If Congress had meant to impose that restriction, there were many ways in which it could have done so rather than using the broad and unqualified phrase "retirement funds." For example, Congress could simply have exempted "funds set aside for the debtor's own re-

tirement." Indeed, every other exemption in Section 522(d) refers to "the debtor's" interest in the property at issue or how the property functions in "the debtor's" hands. See Pet. Br. 33-34. Or Congress could have included an express exception for inherited IRAs. Congress did not include any such limitation in the statute it enacted, and it is a familiar interpretive principle that courts must "refrain from reading a phrase into [a] statute when Congress has left it out." *Keene Corp.* v. *United States*, 508 U.S. 200, 208 (1993).

b. The best evidence of the wholly atextual nature of respondents' interpretation is their chronic reliance on *Rousey* v. *Jacoway*, 544 U.S. 320 (2005). See Br. 7-12, 20-21, 25, 27-28, 34, 38-40, 50 n.20. *Rousey* involved a different exemption, Section 522(d)(10), which covers "[t]he debtor's right to receive * * * a payment [1] under a stock bonus, pension, profitsharing, annuity, or similar plan or contract [2] on account of * * * age * * * [3] to the extent reasonably necessary for the support of the debtor and any dependent of the debtor." 11 U.S.C. 522(d)(10). In *Rousey*, the Court held that a traditional IRA satisfied the first statutory requirement, because it provides a substitute for wages, and also the second statutory requirement, because an individual's right to receive payments from a traditional IRA is at least to some extent on account of age. See 544 U.S. at 326-332.

By relying on *Rousey*, respondents seek to import the requirements of the exemption at issue there into the "retirement funds" exemption, arguing that accounts that do not "provide a substitute for wages in retirement" and do not limit the right to payment "on account of age" do not contain "retirement funds." Br. 39, 40. But respondents' argument fails for the simple reason that those requirements, which are explicitly stated in the exemption at issue in *Rousey*, are nowhere to be

found in the text of the "retirement funds" exemption. Congress did not include a "similarity" requirement in the "retirement funds" exemption; instead, it specifically identified, by title and section number, the accounts that it intended to exempt. Nor did Congress limit "retirement funds" to those funds that become available "on account of age"; instead, the only limit Congress imposed on "retirement funds" was that they have been set aside in an enumerated tax-exempt account. As respondents are eventually forced to concede, the two exemptions are "differently worded," Br. 39, and any reliance on *Rousey* is thus misplaced.

For much the same reason, respondents err by attempting to draw an inference about inherited IRAs from one congressman's statement suggesting that the "retirement funds" exemption codified the result in *Rousey*. See Br. 10, 34 (quoting 151 Cong. Rec. E704 (2005) (statement of Rep. Moore)). To begin with, as respondents concede (Br. 9), the "retirement funds" exemption swept well beyond the specific holding in *Rousey*, protecting not just IRAs but an array of other retirement accounts and applying to debtors who proceed under federal and state exemption regimes alike. More broadly, the "retirement funds" exemption is differently worded from the exemption at issue in *Rousey*, and those differences should be given effect. And even if the congressman's statement could be read to suggest that the two exemptions should be construed similarly, the statement of a single congressman cannot alter "the authoritative statement [that] is the statutory text," *Exxon Mobil Corp.* v. *Allapattah Services, Inc.*, 545 U.S. 546, 568 (2005)—particularly where, as here, the statement in question was contained in a written extension of remarks entered *after* both Houses had already passed BAPCPA, see *Barnhart* v. *Sigmon Coal Co.*, 534 U.S.

438, 457 n.15 (2002). Respondents' effort to read in limitations from the distinct exemption at issue in *Rousey* merely underscores that there is no textual basis for those limitations in the "retirement funds" exemption itself.

2. Under respondents' interpretation, the sole function of the phrase "retirement funds" would seemingly be to exclude inherited IRAs from the scope of the exemption. Thus, at one point, respondents state that a "defining feature" of "retirement funds" is that the debtor may leave them "untouched until retirement"—a requirement that would exclude only inherited IRAs. Br. 30 (emphasis omitted). Respondents go so far as to suggest that Congress included the phrase "retirement funds" for the sole purpose of excluding inherited IRAs. Br. 3.

That suggestion "taxes the credulity of the credulous." *Maryland* v. *King*, 133 S. Ct. 1958, 1980 (2013) (Scalia, J., dissenting). If Congress had meant to exclude inherited IRAs from the exemption, it hardly would have done so by means of a questionable negative inference from the phrase "retirement funds." See, *e.g.*, *Public Employees Retirement System* v. *Betts*, 492 U.S. 158, 174 (1989). Instead, as noted above, if Congress had meant to exclude inherited IRAs, there were many ways in which it could have done so explicitly. See pp. 14-15, *supra*.

At a minimum, if Congress had really intended to exclude inherited IRAs from the "retirement funds" exemption, one would expect to find at least some reference to inherited IRAs in BAPCPA's voluminous legislative history. But respondents have not identified so much as a single such reference—much less any evidence that Congress specifically considered, and rejected, exempting inherited IRAs in bankruptcy and then

decided to communicate that choice by including the phrase "retirement funds" in the statute. To the contrary, Congress's undisputed intention in adding the "retirement funds" exemption, consistent with the broad and unqualified language it actually used, was to "expand the protection for tax-favored retirement plans or arrangements that may not be already protected under * * * state or Federal law." H.R. Rep. No. 31, 109th Cong., 1st Sess., Pt. I, at 63-64 (2005).

As this Court has observed, "where Congress has intended to provide * * * exceptions to provisions of the Bankruptcy Code, it has done so clearly and expressly." *Travelers Casualty & Surety Co.* v. *Pacific Gas & Electric Co.*, 549 U.S. 443, 453 (2007) (alteration in original; citation omitted); see *Law* v. *Siegel*, No. 12-5196 (Mar. 4, 2014), slip op. 9. For example, when Congress intended to exclude certain IRAs but not others from the statutory cap on the amount of the "retirement funds" exemption, it specifically identified the excluded types of IRAs by name and subsection. See 11 U.S.C. 522(n). To say the least, respondents' dubious negative inference from the phrase "retirement funds" falls far short of such a "clear" and "express" exception.

3. What is more, respondents' definition of "retirement funds" is as ambiguous as it is atextual. Respondents provide repeated assurances that the phrase "retirement funds" excludes only inherited IRAs and not any funds in the hands of the initial owner. See, *e.g.*, Br. 2, 3, 30, 32. But it is hard to know whether that would be true under an honest application of respondents' proposed definition. While respondents contend that only funds in an account with the "objective features" of a retirement account are exempt, they never say what those features actually are. Instead, while stating at one point that a "defining feature" of a retirement account is that

the debtor may leave the funds in the account "untouched until retirement," Br. 30 (emphasis omitted), respondents list various other features at other points, such as "a restriction on or penalty for early withdrawal," Br. 20, 28, and mandatory distributions after an age at which the account holder is "likely to be retired," Br. 11, 40.

Must an account bear all of these features? Or only some? Are some features more important? To what degree? For example, is an early withdrawal penalty of only 2% that applies only to earnings sufficient to "encourage * * * use for retirement purposes"? Br. 19. If respondents know, they are not telling. Far from supplying an "administrable standard" (Br. 3), respondents' complex gloss on the phrase "retirement funds" would presumably require that those questions, and others, be worked out in precisely the sort of context-specific adjudication that the categorical "retirement funds" exemption was intended to avoid. See Pet. Br. 24-25.

Respondents also elide significant differences between various tax-exempt retirement accounts—differences that could result in some retirement accounts not qualifying as "retirement funds" even in the hands of their initial owners. Br. 32-33. For example, because contributions to Roth IRAs are not subject to any withdrawal penalty, those accounts consist substantially of "liquid assets that can be used at any time." Br. 21. In addition, the owner of a Roth IRA can continue to contribute to the account past age 70½, and he is not required to take any distributions from the account even after that age. See 26 U.S.C. 408A(c)(4), (c)(5). Those features do not "help ensure that money is, in fact, used for retirement purposes." Br. 28. Quite the contrary: the "objective features" of a Roth IRA create ample incentives for the initial owner to use the money before re-

tirement—or, in the alternative, to pass on a substantial portion of the money to a beneficiary. It is thus unclear whether funds in a Roth IRA would qualify as "retirement funds" under respondents' amorphous definition.

So too with Section 457(b) plans. An individual who participates in a Section 457(b) plan, although barred from making withdrawals while he remains with his employer, may make penalty-free withdrawals, regardless of age or retirement status, upon leaving. See 26 U.S.C. 72(t), 457(d)(1)(A)(ii), 4974(c). As a result, the individual could leave his employer at age 45, start a new job, and withdraw the entirety of the funds penalty-free to buy a sports car. At least at that point, the Section 457(b) plan would not appear to be subject to any rules that "help ensure that the money is, in fact, used for retirement purposes." Br. 28. It is thus open to question whether funds in such a plan would qualify as "retirement funds" under respondents' definition.

4. Finally, respondents repeatedly resort to policy arguments in support of their proposed interpretation. When the text of a statute is unambiguous, however, the "judicial inquiry is complete." *Connecticut National Bank* v. *Germain*, 503 U.S. 249, 254 (1992) (citation omitted). Here, the plain text of the "retirement funds" exemption unambiguously covers inherited IRAs, and this Court should refuse to "indulge an argument based on legislative purpose where the text alone yields a clear answer." *Curtiss-Wright Corp.* v. *Schoonejongen*, 514 U.S. 73, 81 (1995).

That should be all the more so where, as here, there is no evidence to suggest that Congress specifically focused on the question at issue. In the absence of such evidence, respondents resort to generic arguments about the "objects and policy of federal bankruptcy law." Br. 33 (internal quotation marks and citation omitted). But

as respondents have previously acknowledged, "[t]he principal purpose of the Bankruptcy Code is to grant a 'fresh start' to the 'honest but unfortunate debtor.'" Br. in Opp. 3 (citation omitted). Congress has promoted the ability to make such a fresh start by creating a variety of exceptions and exemptions from the estate, including, *inter alia*, jewelry; funds in an education savings account; life insurance; and "any property" up to a certain amount. See 11 U.S.C. 522(d)(4), (5), (7), (8); 11 U.S.C. 541(b)(5), (6). Contrary to respondents' repeated assertions, Congress has not limited those provisions to "true life necessities" essential to "surviv[al]." Br. 20, 36 n.13; see Br. 3, 5, 6 & n.5, 7, 24, 33-34, 35, 52-53.

While respondents contend that "[i]nterpreting the 'retirement-funds' exemption to shield funds in an inherited IRA does not jibe * * * with that exemption's specific purpose," Br. 35, they cite no affirmative evidence that Congress acted with the specific purpose of excepting inherited IRAs. While respondents note (Br. 36) that Congress did not exempt cash inheritances, that hardly aids their argument: to state the obvious, the difference between a cash inheritance and an inherited IRA is that the beneficiary of an IRA receives not a sum of cash, but a retirement account that is exempt from taxation, can continue to grow tax-free, and is thus explicitly covered by the "retirement funds" exemption. Although respondents see "no apparent bankruptcy purpose" for treating the two situations differently, Br. 36, the legislatures of seven States have specifically considered the question and drawn the same distinction. See p. 10, *supra*.

Ultimately, of course, all of this is beside the point. To the extent that there may be policy reasons to limit the categorical "retirement funds" exemption in the manner respondents propose, that "is a task for Con-

gress, not the courts." *Hartford Underwriters Insurance Co.* v. *Union Planters Bank, N.A.*, 530 U.S. 1, 13-14 (2000). This Court should reject respondents' atextual interpretation, and, like the overwhelming majority of lower courts to have considered the issue, hold that the "retirement funds" exemption covers inherited IRAs.

* * * * *

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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AMICUS CURIAE BRIEF

RECORD
AND
BRIEFS

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IN THE

Supreme Court of the United States

BRANDON C. CLARK AND HEIDI K. HEFFRON-CLARK,

Petitioners,

v.

WILLIAM J. RAMEKER, TRUSTEE, ET AL.

Respondents.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

BRIEF OF *AMICUS CURIAE* G. ERIC BRUNSTAD, JR. IN SUPPORT OF PETITIONER

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INTEREST OF THE *AMICUS CURIAE*[1]

The undersigned *amicus curiae* is an Adjunct Professor of Law at New York University School of Law and a frequent Visiting Lecturer in Law at the Yale Law School where he teaches various courses on bankruptcy, domestic and international business reorganizations, commercial transactions, secured transactions, federal courts, and argument and reason. He began teaching at Yale in 1990, began teaching at NYU in 2012, and has also taught at the Harvard Law School. In addition to his teaching, the undersigned is a contributing author for Collier on Bankruptcy, responsible for writing several chapters of the Treatise. He is also a partner at the law firm of Dechert LLP; a prior Chair of the ABA Business Bankruptcy Committee; a former member of the Judicial Conference Advisory Committee on the Federal Bankruptcy Rules; and a Fellow of the American College of Bankruptcy.

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[1] No counsel for any party has authored this brief in whole or in part, and no party or counsel for a party has made a monetary contribution to the preparation or submission of this brief. *See* Sup. Ct. R. 37.6. All parties have been timely notified of the undersigned's intent to file this brief; both petitioner and respondent have consented to the filing of this brief. Petitioner has filed with the Court a letter consenting to the filing of *amicus curiae* briefs in support of either or neither party. A copy of respondent's consent is filed herewith.

The undersigned has briefed and argued numerous bankruptcy matters before the Court, including *Schwab v. Reilly*, 560 U.S. 770 (2010); *Milavetz, Gallop & Milavetz, P.A. v. United States*, 559 U.S. 229 (2010); *Florida Dep't of Revenue v. Piccadilly Cafeterias, Inc.*, 554 U.S. 33 (2008); *Travelers Cas. & Sur. Co. v. Pacific Gas & Elec. Co.*, 549 U.S. 443 (2007); *Marrama v. Citizens Bank of Mass.*, 549 U.S. 365 (2007); *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004); and *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1 (2000). He has otherwise participated as counsel for one of the parties in numerous other bankruptcy matters before the Court, including *Executive Benefits Insurance Agency v. Arkison*, no. 12-1200 (2014); *Stern v. Marshall*, 131 S. Ct. 2594 (2011); *Hamilton v. Lanning*, 560 U.S. 505 (2010); *Central Virginia Cmty. College v. Katz*, 546 U.S. 356 (2006); *Rousey v. Jacoway*, 544 U.S. 320 (2005); *Kontrick v. Ryan*, 540 U.S. 443 (2004); *Lamie v. United States Trustee*, 540 U.S. 526 (2004); *FCC v. NextWave Personal Commc'ns Inc.*, 537 U.S. 293 (2003); and *Connecticut Nat'l Bank v. Germain*, 503 U.S. 249 (1992). In addition, he has prepared and filed with the Court numerous amicus briefs in bankruptcy cases, including *Law v. Siegel*, no. 12-5196 (2014); *Bullock v. BankChampaign, N.A.*, 133 S. Ct. 1754 (2013); *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 132 S. Ct. 2065 (2012); *Hall v. United States*, 132 S. Ct. 1882 (2012); *Ransom v. FIA Card Servs.*, 131 S.

Ct. 716 (2011); *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260 (2010); *Howard Delivery Serv., Inc. v. Zurich American Ins. Co.*, 547 U.S. 651 (2006); *Tennessee Student Assistance Corp. v. Hood*, 541 U.S. 440 (2004); *Archer v. Warner*, 538 U.S. 314 (2003); and *Things Remembered, Inc. v. Petrarca*, 516 U.S. 124 (1995).

The undersigned is deeply interested in the subject of bankruptcy law and has written, taught, and lectured on the subject of bankruptcy exemptions. The purpose of this brief is to address matters that bear on the Court's determination of an important bankruptcy issue: whether an Individual Retirement Account ("IRA") that passes to a non-spouse beneficiary upon the death of the original account holder qualifies as "retirement funds" that are exempt from the beneficiary's bankruptcy estate under section 522(b)(3)(C) of the Bankruptcy Code. Under well-established principles of statutory interpretation, an inherited IRA of the kind at issue in this case properly constitutes exempt retirement funds under section 522(b)(3)(C). Rather than apply these well-established principles, however, the Seventh Circuit erred in conducting an erroneous economic analysis of the desirability of treating as exempt the particular IRA in question. As this Court indicated in *Jones v. Harris Assoc., L.P.*, 559 U.S. 335 (2010), economic analysis of the kind employed by the court below is not a proper substitute for customary methods of statutory construction because

such economic analysis inherently substitutes the judge's policy preferences for those of the legislature. *Id.* at 353 (criticizing the Seventh Circuit's economic analysis of section 36(b) of the Investment Company Act of 1940, and in particular the economic debate between two members of the court as "a matter for Congress, not the courts"). In addition, the reasoning of the court below is all the more insupportable because, by its very design, section 522(b)(3)(C) affirmatively forecloses such economic second-guessing. If the IRA in question falls within the scope of the relevant tax provisions specifically cross-referenced in section 522(b)(3)(C), that is supposed to be the end of the matter, subject to certain statutory restrictions not relevant here (e.g., section 522(n), which imposes a monetary cap of approximately $1.2 million on certain retirement accounts).

In contrast with the Seventh Circuit's erroneous economic analysis in this case, the Fifth Circuit in *In re Chilton*, 674 F.3d 486 (5th Cir. 2012), properly applied a traditional statutory analysis to section 522(d)(12), the identical counterpart to section 522(b)(3)(C) applicable to debtors claiming exemptions under federal rather than state law. The Fifth Circuit focused on the text, context, and legislative purpose of section 522(d)(12), not the perceived economic desirability of treating the particular IRA as exempt. The undersigned argues that the Fifth Circuit's deci-

sion in *Chilton* is correct and the decision of the court below should be reversed.

STATEMENT

Petitioner Heidi Heffron-Clark was the sole beneficiary of an IRA established by her late mother, Ruth Heffron. Pet. App. 10a. Ruth Heffron died in September of 2001, at which time her retirement account was worth approximately $300,000. Pet. App. 2a, 10a. Thereafter, Heffron-Clark established a Beneficiary Individual Retirement Account (the "Inherited IRA") and transferred the funds from her mother's IRA into the Inherited IRA. Pet. App. 10a.

After their business failed, Petitioners filed for bankruptcy relief under Chapter 7 of the Bankruptcy Code. *Id.* As part of their bankruptcy filing, they claimed the Inherited IRA as exempt under section 522(b)(3)(C) of the Code, 11 U.S.C. § 522(b)(3)(C), which exempts "retirement funds to the extent that those funds are in a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986." *Id.* Respondents William Rameker, the bankruptcy trustee, and Resul and Zinije Adili, d/b/a Kegonsa Plaza, a judgment creditor, objected to the exemption. *Id.*

On May 10, 2011, the bankruptcy court sustained Respondents' objection. Pet. App. 35a.

The bankruptcy court reasoned that, even though the funds in question are being held in a segregated tax-exempt "retirement" account, they are not "retirement funds" because, following Ruth Heffron's death, they are not being held in contemplation of anyone's retirement. Pet. App. 29a-30a. ("Currently, the funds are held in anticipation of no person's retirement and likewise cannot, under the plain meaning of the statute, constitute 'retirement funds.' They are not segregated to meet the needs of, nor distributed on the occasion of, any person's retirement.").

On appeal, the district court reversed. Pet. App. 10a. Parting company with the bankruptcy court, the district court concluded that the term "retirement funds" for purposes of section 522(b)(2)(C) refers "to any account that contained such funds, so long as the funds had been accumulated for retirement purposes originally." Pet. App. 16a-17a; *see also* Pet. App. 20a (stating that section 522(b)(3)(C) "do[es] not distinguish between an account built up by a decedent and inherited by a debtor and an account made up of contributions by the debtor herself").

On further appeal, the Seventh Circuit in turn reversed the district court. Pet. App. 7a. In elaborating its decision, the court conducted an economic analysis focusing on its perceptions of the economic attributes of inherited IRAs and the interests of creditors in receiving payment of their claims. In particular, the court stated in

summary fashion: "To treat this account as exempt under § 522(b)(3)(C) . . . would be to shelter from creditors a pot of money that can be used freely for current consumption." Pet. App. 4a. Acknowledging that the funds in question are being held in a tax-exempt account, the court nonetheless determined that this was not sufficient: "that an inherited IRA provides tax benefits is not enough." *Id.* Reasoning instead that "[s]ection 522(b)(3)(C) . . . does not throw creditors' claims to the wolves in order to enhance savings and bequest motives," the court determined that inherited IRAs do not qualify as exempt "because they are not savings reserved for use after their owners stop working." *Id.* at 7a. The court concluded: "inherited IRAs represent an opportunity for current consumption, not a fund of retirement savings." *Id.* This appeal followed.

SUMMARY OF THE ARGUMENT

The court below did not conduct a traditional statutory analysis. Among other things, there is no discussion in its opinion whether the language of section 522(b)(3)(C) is plain or ambiguous; none of the usual canons of construction are applied; there is no reference to the history of the treatment of retirement accounts in bankruptcy, the legislative history behind section 522(b)(3)(C), this Court's prior decisions on the ability of a bankrupt debtor to exempt retirement funds, or the general purpose of exemp-

tions in conjunction with a debtor's bankruptcy "fresh start." Instead, the court conducted an economic analysis focusing on its perceptions of the economic attributes of inherited IRAs and the interests of creditors in receiving payment of their claims, stating summarily: "To treat this account as exempt under § 522(b)(3)(C) . . . would be to shelter from creditors a pot of money that can be used freely for current consumption." Pet. App. 4a. Concluding that, in its view, "[s]ection 522(b)(3)(C) . . . does not throw creditors' claims to the wolves in order to enhance savings and bequest motives," the court determined that inherited IRAs cannot qualify as exempt because they "represent an opportunity for current consumption, not a fund of retirement savings." *Id.* at 7a.

This Court should reverse the Seventh Circuit's erroneous economic analysis. To begin with, there is no warrant for it in the governing statutory provision. The ability of a bankrupt debtor to exempt an IRA under section 522(b)(3)(C) does not turn on whether the debtor can currently consume all or part of the funds in question, and for good reason. Virtually *every* IRA represents an opportunity for current consumption in one way or another. For example, debtors who have not reached the relevant retirement age may nonetheless generally withdraw funds from traditional IRAs for current consumption subject to certain penalties, and specifically may do so without penalty to pay cer-

tain medical and educational expenses or to purchase a first home. Likewise debtors who have reached the relevant retirement age may withdraw funds without penalty for any reason. Similarly, debtors can make penalty-free withdrawals from Roth IRAs whenever they choose. If the debtor's ability to currently consume the funds in question were the test, virtually no IRA would qualify as exempt—a result at odds with Congress's intent in enacting section 522(b)(3)(C) to expand the kinds of funds that qualify.

Moreover, the very point of permitting exempt assets in bankruptcy is to shelter them from the reach of creditors to help facilitate the debtor's fresh-start. Although the court below expressed a strong preference for using the funds at issue here to satisfy the creditors' claims, that is not an economic policy judgment the court was entitled to make. This Court has previously cautioned that such policy judgments are for Congress, not the courts. *See Jones v. Harris Assoc., L.P.*, 559 U.S. 335, 353 (2010). And Congress's policy judgments are best revealed by resort to traditional methods of statutory analysis, not the kind of economic analysis the court below applied in this case.

More important, section 522(b)(3)(C) by its terms plainly forecloses the Seventh Circuit's economic rationale. With its careful cross-references to various provisions of the tax laws, the central point of section 522(b)(3)(C) is to di-

rect that, if an account qualifies for tax treatment as a retirement fund under the cross-referenced tax provisions, it qualifies as exempt under the Bankruptcy Code. This is to avoid the very sort of costly litigation at issue here, as well as judicial investigation into the economic, subjective, or other attributes of a particular tax-exempt account to determine if it ought to qualify as "retirement funds" on the basis of some unarticulated calculus.

Applying recognized methods of statutory analysis, it is plain that the funds in question qualify as exempt. *See In re Chilton*, 674 F.3d 486 (5th Cir. 2012). This conclusion is supported by the recognized principle that, because exemptions promote the debtor's fresh-start, any exceptions to them should be construed narrowly and should be limited to those plainly stated. The decision below should be reversed.

ARGUMENT

A. The Seventh Circuit Erred By Conducting An Economic Analysis Of The Inherited IRA Rather Than Looking To Well-Established Methods Of Statutory Interpretation.

Section 522(b)(3)(C) of the Bankruptcy Code allows debtors to exempt from the bankruptcy estate "retirement funds to the extent that those funds are in a fund or account that is

exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986." 11 U.S.C. § 522(b)(3)(C). The plain implication of this provision—and its most natural reading—is that if a fund or account is exempt from taxation under one of the cross-referenced provisions of the Internal Revenue Code ("IRC"), it is exempt under the Bankruptcy Code—subject to statutory qualifications not relevant here (e.g., section 522(n), 11 U.S.C. § 522(n), which caps the amount of certain exempt retirement funds). Thus, what matters is the complying nature of the savings vehicle under the tax laws. For example, the debtor's placement of $1,000 in cash in a shoebox marked "retirement funds" stashed under the bed would not qualify for exemption because bedroom shoebox hoarding is not a recognized method of savings under section 401, 403, 408, 408A, 414, 457, or 501(a) of the IRC. On the other hand, the placement of the same funds in a traditional IRA would qualify—regardless of such things as the account funder's subjective intent in placing the funds in the account or the ultimate actual use of the funds. And because there is no disqualification for inherited IRAs under these tax provisions—on the contrary, they are permissible—the Inherited IRA at issue in this matter properly falls within the scope of section 522(b)(3)(C).

Eschewing any sort of traditional statutory analysis—including the plain meaning of the governing statutory text—the court below held for

economic reasons that an individual retirement account ceases to be "retirement funds" under section 522(b)(3)(C) when it passes by inheritance to a non-spouse of the account holder. Pet. App. 4a. In particular, the court concluded that the Inherited IRA at issue here does not constitute "retirement funds" because to allow the Petitioners to exempt it under the statute "would be to shelter from creditors a pot of money that can freely be used for current consumption." Pet. App. 4a. But there is nothing in section 522(b)(3)(C) that restricts or qualifies its scope in this way. The statute does not say that it applies only to funds that are incapable of being consumed currently. It says that it applies to a "fund or account" that is exempt from taxation under various enumerated provisions of the IRC, which provisions plainly exempt from taxation funds that are capable of being consumed currently.

As Petitioners elaborate in their brief, debtors who have not reached the relevant retirement age may nonetheless withdraw funds from traditional IRAs for current consumption without penalty in order to pay for certain medical and educational expenses or to purchase a first home. Pet. Br. 8. Similarly, debtors can make penalty-free withdrawals from Roth IRAs whenever they choose. *Id.* at 25. Likewise debtors who have reached the relevant retirement age may withdraw funds from traditional IRAs without penalty for any reason, including (obviously)

current consumption. Whether or not a debtor has the ability to currently consume a fund or account is simply not the litmus test of the statute, and the Seventh Circuit's economic considerations cannot justify its rewriting of the provision to achieve the policy result it prefers. *United States v. Locke*, 471 U.S. 84, 95 (1985) (courts do not have "carte blanche to redraft statutes in an effort to achieve that which Congress is perceived to have failed to do"). As this Court recently made clear in *Jones v. Harris Assoc., L.P.*, 559 U.S. 335 (2010), that kind of economic policy evaluation is for Congress to make in considering legislation, not for the courts in interpreting it. And Congress's actual policy judgments are best revealed by resort to traditional methods of statutory analysis, not the kind of analysis the Seventh Circuit employed below.

1. The Inherited IRA Constitutes "Retirement Funds" Under Section 522 Pursuant To Established Methods Of Statutory Interpretation.

In construing and applying the Bankruptcy Code, "[t]he starting point ... is the existing statutory text." *Lamie v. United States Trustee*, 540 U.S. 526, 534 (2004). In addition, "when the statute's language is plain, the sole function of the courts—at least where the disposition required by the text is not absurd—is to enforce it according to its terms." *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S.

1, 6 (2000) (internal quotations omitted); *see also Rake v. Wade*, 508 U.S. 464, 471 (1993); *Connecticut Nat'l Bank v. Germain*, 503 U.S. 249, 253-54 (1992). That is because a cardinal presumption is that Congress "says in a statute what it means and means in a statute what it says there." *Germain*, 503 U.S. at 254. Similarly, courts must also generally refrain from engrafting limitations on provisions of the Code that do not appear in its text. *E.g.*, *Lamie*, 540 U.S. at 537-38.

As discussed above, there is nothing in section 522(b)(3)(C) that authorizes the "current consumption" limitation that the Seventh Circuit imposed in this case. On the contrary, the ordinary, plain meaning of the provision encompasses inherited IRAs.

Reference to other provisions within section 522 further supports the conclusion that inherited IRAs are exempt under section 522(b)(3)(C). Section 522(b)(4)(C) provides that a transfer of retirement funds from a tax-exempt fund does not cause those funds to cease to qualify for an exemption under section 522(b)(3)(C). Specifically, section 522(b)(4)(C) provides that:

> A direct transfer of retirement funds from 1 fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986, under section 401(a)(31) of

> the Internal Revenue Code of 1986, or otherwise, shall not cease to qualify for exemption under paragraph (3)(C) or subsection (d)(12) by reason of such direct transfer.

11 U.S.C. § 522(b)(4)(C). Under the express terms of this provision, the transfer of funds from Ruth Heffron's IRA account to Petitioners' Inherited IRA does not cause the funds to lose their status as "retirement funds" subject to exemption from the bankruptcy estate. *See In re Chilton*, 674 F.3d at 489 (because there is "no reason to interpret the statutory language differently from its plain meaning," under § 522(b)(4)(C) "the direct transfer of 'retirement funds' does not alter their status as 'retirement funds'"). Furthermore, the other exemptions included in section 522 expressly limit the exemption to *the debtor's interest in* the exempt property, but the provisions relating to retirement funds do not, suggesting further that inherited IRAs are properly included as exempt. 11 U.S.C. § 522.

As this Court has explained, "[w]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." *Russello v. United States*, 464 U.S. 16, 23 (1983) (citations and marks omitted). Moreover, the provisions of the

Bankruptcy Code are properly construed "holistically," taking into account the structure of the Code as a whole, the relationship between its various provisions, and Congress's collective and systematic choice of words. *See United Sav. Ass'n v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 369-71 (1988) (construing several sections of the Bankruptcy Code together and observing that "[s]tatutory construction ... is a holistic endeavor"); *Kelly v. Robinson*, 479 U.S. 36, 43 (1986) ("In expounding a statute, we must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law") (citations omitted). Considered as a whole, the various provisions of section 522 cited above collectively demonstrate that the treatment of inherited IRAs as exempt is not only directed by section 522(b)(3)(C), it is also fully consistent with the various provisions of the statute generally.

2. This Court Has Indicated Previously That Economic Analysis Of The Kind Employed Below Is Not An Appropriate Substitute For Traditional Statutory Interpretation.

In addition to rigorous examination of the relevant statutory text, this Court has identified other considerations that may be taken into account to illuminate the meaning of a particular provision of the Bankruptcy Code. For example, the Court has explained that, "[w]hen Congress

amends the bankruptcy law, it does not write on a clean slate." *Dewsnup v. Timm*, 502 U.S. 410, 419 (1992) (citation and marks omitted). Accordingly, an historical analysis of bankruptcy procedures and customs may also be consulted as part of the interpretive exercise. *Cohen v. De La Cruz*, 523 U.S. 213, 221 (1998) (this Court "will not read the Bankruptcy Code to erode past bankruptcy practice absent a clear indication that Congress intended such a departure"); *see also Duparquet Huot & Moneuse Co. v. Evans*, 297 U.S. 216, 218 (1936) ("To fix the meaning of these provisions [of the Bankruptcy Act] there is need to keep in view the background of their history."). Courts may also look "not only to the particular statutory language, but to the design of the statute as a whole and to its object and policy," *Dada v. Mukasey*, 554 U.S. 1, 16 (2008) (*quoting Gozlon-Peretz v. United States*, 498 U.S. 395, 407 (1991)), by taking into account such things as the relevant legislative history and the problem Congress was attempting to resolve. What courts may not do, however, is adopt interpretations that simply substitute their own policy preferences for those of the legislature, including through economic analysis.

The Court recently reiterated this point at the end of its discussion in *Jones v. Harris*, 559 U.S. 335 (2010). In *Jones*, the plaintiffs were investors in mutual funds who claimed that the fees collected by the funds' investment adviser were excessive and in violation of section 36(b) of

the Investment Company Act of 1940, which imposes on investment advisers "a fiduciary duty with respect to the receipt of compensation for services." *Id.* at 338 (*quoting* 15 U.S.C. § 80a-35(b)). In finding that there had been no breach of fiduciary duty in the case, the Seventh Circuit expressly declined to follow the Second Circuit's statutory approach that considered whether the relevant fee was "so disproportionately large that it bears no reasonable relationship to the services rendered and could not have been the product of arm's-length bargaining." *Jones v. Harris Assoc. L.P.*, 527 F.3d 627, 631-32 (7th Cir. 2008) (*quoting Gartenberg v. Merrill Lynch Asset Mgmt., Inc.*, 694 F.2d 923, 928 (2d Cir. 1982)). Instead, the Seventh Circuit adopted an economic approach. Stating that "[a] fiduciary duty differs from rate regulation," the Seventh Circuit held that "[a] fiduciary must make full disclosure and play no tricks but is not subject to a cap on compensation." *Id.* at 32. The court reasoned that, if full disclosure was made, market forces would regulate fees because "[h]olding costs down is vital in competition ... and as management fees are a substantial component of administrative costs, mutual funds have a powerful reason to keep them low unless higher fees are associated with higher return on investment." *Id.* at 631-32. That mutual funds are created by, and therefore are "captives" of, their investment advisers did not dissuade the Court, which found that although "mutual funds rarely fire their in-

vestment advisers, ... investors can and do 'fire' advisers cheaply and easily by moving their money elsewhere." *Id.* at 634.

Following the panel decision in the matter, the Seventh Circuit denied rehearing en banc. *Jones v. Harris Assoc. L.P.*, 537 F.3d 728 (7th Cir. 2008). A dissenting opinion to the en banc denial criticized the panel's decision as based "mainly on an economic analysis that is ripe for reexamination." *Id.* at 730. Attacking the accuracy of the panel's market assessments, the dissent cited "evidence that connections among agents in [the mutual fund industry] foster favoritism, to the detriment of investors." *Id.* (citation omitted). Furthermore, the dissent expressed doubt as to the panel's conclusion that competition could eliminate the threat of excessive fees, noting the concern that the investment adviser in question charged the funds an amount more than twice what it charged other, independent funds. *Id.* at 730-31.

This Court granted certiorari, approved the Second Circuit's statutory analysis in *Gartenberg*, and vacated and remanded the Seventh Circuit's judgment. In determining the meaning of section 36(b)'s reference to a "fiduciary duty," the Court based its decision "on the terms of that provision and the role that a shareholder action for breach of that duty plays in the overall structure of the Act." *Jones*, 559 U.S. at 345. Consistent with well-established methods of statutory

interpretation, the Court began its analysis with the language of section 36(b) and concluded that "the [Second Circuit's] *Gartenberg* approach fully incorporates [the] understanding of the fiduciary duty as set out in [prior Supreme Court precedent] and reflects § 36(b)(1)'s imposition of the burden on the plaintiff." *Id.* at 346-47. The Court further concluded that "*Gartenberg's* approach also reflects 36(b)'s place in the statutory scheme and, in particular, its relationship to the other protections that the Act affords investors." *Id.* at 348.

In contrast, the Court found that the Seventh Circuit had erred in conducting an economic analysis that treated an adviser's duty as simply one of disclosure on the assumption that market forces would effectively regulate the level of fees. *Id.* at 353. The Court made clear that neither the panel's economic analysis nor the conflicting economic analysis offered by the dissent to the denial of *en banc* review was an appropriate basis on which to resolve a question of statutory interpretation, concluding that "[t]he debate between the Seventh Circuit Panel and the dissent from the denial of rehearing regarding today's mutual fund market is a matter for Congress, not the courts." *Id.*

The import of the Court's critique in *Jones* is clear: economic analysis of the kind the Seventh Circuit employed is not a proper substitute for traditional methods of statutory interpreta-

tion. The rationale underlying the court's critique also seems clear: whereas traditional statutory analysis aims to reveal and respect Congressional directives, economic analysis of the kind the Seventh Circuit employed effectively substitutes the judge's policy preferences for those of the legislature. In this case, the Seventh Circuit likewise failed to conduct a traditional statutory analysis, instead adopting an economic test that has no warrant in section 522(b)(3)(C). As in *Jones*, the Court should reverse the decision below.

B. The Court of Appeals' Interpretation Of Section 522 Is Contrary To The Fresh Start Policy.

It is well-established that "the principal purpose of the Bankruptcy Code is to grant a 'fresh start' to the 'honest but unfortunate debtor.'" *Marrama v. Citizens Bank*, 549 U.S. 365, 367 (2007) (citations omitted); *Local Loan Co. v. Hunt*, 292 U.S. 234, 245 (1934) ("The various provisions of the Bankruptcy Act were adopted in the light of [the "fresh start" policy"] and are to be construed when reasonably possible in harmony with it so as to effectuate the general purpose and policy of the act.").

It is also well-established that exemptions in bankruptcy cases are an integral part of a debtor's "fresh start." *Rousey v. Jocaway*, 544 U.S. 320, 325 (2005) ("To help the debtor obtain

a fresh start, the Bankruptcy Code permits him to withdraw from the estate certain interests in property, such as his car or home, up to certain values."); *United States v. Security Indus. Bank*, 459 U.S. 70, 72 n.1 (1982) ("The exemptions were designed to permit individual debtors to retain exempt property so that they will be able to enjoy a 'fresh start' after bankruptcy."). As explained in the House Report accompanying section 522 of the Code:

> The historical purpose of these exemption laws has been to protect a debtor from his creditors, to provide him with the basic necessities of life so that even if his creditors levy on all of his non-exempt property, the debtor will not be left destitute and a public charge ... [T]he bill continues to recognize the states' interest in regulating credit within the states, but enunciates a bankruptcy policy favoring a fresh start .... Bankruptcy exists to provide relief for an overburdened debtor.

H.R. Rep. No. 595, 95th Cong. 126 (1977), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6087.

Moreover, because the fresh start is fundamental to the administration of bankruptcy cases, procedures and exceptions that burden the debtor's exemptions, like those that impair a

debtor's discharge generally, should be construed narrowly and likewise should be limited to those plainly expressed. *See Bullock v. BankChampaign, N.A.*, 133 S.Ct. 1754, 1760 (2013) (noting "the long-standing principle that exceptions to discharge should be confined to those plainly expressed") (citations omitted); *Kawaauhau v. Geiger*, 523 U.S. 57, 62 (1998). That is especially so in this case because, as Petitioners explain in their brief, Congress enacted section 523(b)(3)(C) to "*expand* the protection for tax-favored retirement plans or arrangements ...." Pet. Br. 24 (*quoting* H.R. Rep. No. 31, 109th Cong., 1st Sess., Pt. I, at 63-64 (2005) (emphasis added)).

In this case, the court below construed section 522(b)(3)(C) restrictively in a manner flatly at odds with these principles. In furtherance of the Code's general policy favoring a fresh start, Congress has determined forthrightly that, subject to certain limits not relevant here (e.g., section 522(n)), debtors are entitled to exempt funds or accounts set aside in the various tax-exempt vehicles cross-referenced in section 522(b)(3)(C). Consistent with Congress's expansionary purpose in enacting section 522(b)(3)(C), together with the established principle that restrictions on exemptions should be limited to those plainly expressed and otherwise tightly construed, the Court should interpret this provision in a manner that does not restrict the Petitioners' exemption in this case. The Seventh Circuit's flawed reading of the statute to exclude inherited IRAs

limits the exemption in a manner that Congress did not expressly intend, and should be reversed.

CONCLUSION

For the foregoing reasons, as well as those briefed by Petitioner, the decision of the court below should be reversed.

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AMICUS CURIAE BRIEF

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IN THE

Supreme Court of the United States

BRANDON C. CLARK AND HEIDI K. HEFFRON-CLARK,
Petitioners,

v.

WILLIAM J. RAMEKER, TRUSTEE, ET AL.
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF *AMICUS CURIAE* OF PROFESSOR SEYMOUR GOLDBERG IN SUPPORT OF RESPONDENTS

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INTEREST OF AMICUS[1]

Professor Seymour Goldberg is a senior partner in the law firm of Goldberg & Goldberg, P.C. He is Professor Emeritus of Law and Taxation at Long Island University and is the former director of the Tax Institute of Long Island University, C.W. Post Campus.

Professor Goldberg is the recipient of the American Jurisprudence Award in Federal Estate and Gift Taxation from St. John's University School of Law. He is a former member of the IRS Northeast Pension Liaison Group and has been involved in conducting continuing education outreach programs with the IRS on the retirement distribution rules. He is the recipient of outstanding discussion leader awards from both the American Institute of Certified Public Accountants and the Foundation For Accounting Education. He has applied for and obtained more than 85 IRS private letter rulings on IRA distribution issues, estate and gift tax issues and fiduciary income tax issues. He has served as an instructor in continuing legal education programs on the IRA Distribution Rules for a number of legal associations including the New York State Bar, New Jersey Institute of Continuing Legal Education, Association of

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[1] No counsel for any party has authored this brief in whole or in part, and no party or counsel for a party has made a monetary contribution to the preparation or submission of this brief. All parties have been timely notified of the undersigned's intent to file this brief; both petitioner and respondent have consented to the filing of this brief. Petitioners' written consent for the submission of this brief is on file with the Clerk of the Court. Letters of consent from Respondents accompany this brief.

the Bar of the City of New York, Suffolk Academy of Law and Nassau Academy of Law.

Professor Goldberg is the author of numerous books on the taxation of IRAs, including Goldberg, *Inherited IRAs: What Every Practitioner Must Know* (American Bar Association, 1st ed. 2013); Goldberg, *IRA Guide to IRS Compliance Issues Including IRA Trust Violations* (American Bar Association, 1st ed. 2013); and Goldberg, *The IRA Distribution Rules: IRS Compliance and Audit Issues* (American Institute of Certified Public Accountants, 1st ed. 2012). In addition, Professor Goldberg is the author of a manual for the American Bar Association on the trust accounting rules, Goldberg, Fundamentals of Trust Accounting Income and Principal Rules Under the Revised New York State Laws (American Bar Association, 1st ed. 2014).

Professor Goldberg has a strong professional interest in this case. First, Professor Goldberg regularly advises clients on the legal consequences of creating or inheriting an IRA, including in the context of bankruptcy. Second, this case depends on whether funds in an inherited IRA are properly characterized as "retirement funds." Given Professor Goldberg's expertise in the tax treatment of inherited IRAs as it relates to retirement planning, Professor Goldberg has a professional interest in that question being resolved correctly.

INTRODUCTION AND SUMMARY OF ARGUMENT

Under 11 U.S.C. § 522(b)(3)(C), a debtor may exempt from the bankruptcy estate "retirement funds to the extent that those funds are in a fund or ac-

count that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986." This provision makes clear that not *all funds* that "are in a fund or account that is exempt from taxation" under one of the enumerated provisions can be exempted from the bankruptcy estate. Rather, for purposes of § 522(b)(3)(C), only *retirement funds* that are in such a fund or account can be exempted from the bankruptcy estate. This case presents the question of whether funds in an inherited IRA are "retirement funds" under § 522(b)(3)(C).

The Bankruptcy Code does not expressly define the phrase "retirement funds." Nevertheless, an analysis of the tax treatment of different types of accounts under the Internal Revenue Code provisions enumerated in § 522(b)(3)(C) provides a straightforward answer to the question of whether those accounts contain "retirement funds." As explained below, certain types of accounts, such as IRAs, are taxed in a manner to encourage individuals to save funds in those accounts for retirement. For instance, individuals can invest money in their IRAs before payment of taxes during their working lives, but will be penalized if they remove those funds from the IRA before they reach retirement age. Indeed, that is why an IRA is called an "Individual Retirement Account" – it is an account subject to unique taxation rules that encourage individuals to use the money in their accounts for their retirement. Accordingly, funds in IRAs are "retirement funds."

In contrast, inherited IRAs are taxed in precisely the opposite manner from IRAs. Whereas IRA owners are *encouraged* to add money to IRAs, nonspouse

beneficiaries are *prohibited* from adding money to IRAs. And whereas IRA owners are generally *prohibited* from removing funds from their IRAs prior to retirement age without incurring a penalty, nonspouse beneficiaries are generally *required* to commence immediate distributions from inherited IRAs, even when they have not yet reached retirement age. Although under certain circumstances nonspouse beneficiaries can wait for five years before taking distributions, in such cases the nonspouse beneficiaries are required to then take out the full amount in the inherited IRA account, even if they have not yet reached retirement age. In this sense, inherited IRAs are better characterized as anti-retirement funds: they are structured so as to require immediate consumption of the funds rather than to promote future savings. Accordingly, they are not "retirement funds" under the Bankruptcy Code.

ARGUMENT

I. FUNDS IN IRAS ARE "RETIREMENT FUNDS."

The Internal Revenue Code authorizes taxpayers to create several types of accounts which are given special tax treatment so as to encourage taxpayers to put retirement savings into those accounts. Below, we focus primarily on two popular types of retirement accounts: the Traditional IRA (the type of IRA owned by Petitioner's mother) and the Roth IRA. As explained below, the tax treatment of these accounts makes indisputably clear that these accounts contain retirement funds.

A. Funds in a Traditional IRA are "Retirement Funds."

Petitioner's mother owned a "Traditional IRA." A Traditional IRA has several features that make it a tax-advantaged way to save for retirement – hence the name, "Individual Retirement Account."

First, funds contributed to a Traditional IRA are tax-deductible (subject to certain exceptions, such as high-income taxpayers), and are taxed only when withdrawn from the Traditional IRA. *See* 26 U.S.C. § 219(a), § 408(d)(1). This is tax-advantageous because people are typically in a higher tax bracket when they work than after they retire.

Second, individuals who withdraw funds from a Traditional IRA before age 59½ generally must pay a penalty (subject to certain narrowly-defined exceptions, such as when those funds are used for medical expenses). *See* 26 U.S.C. § 72(t). This is to discourage withdrawals before retirement.

Third, a Traditional IRA owner is required to begin taking minimum distributions when he achieves his "required beginning date," which is generally April 1 of the calendar year after the IRA owner attains age 70½. *See* 26 U.S.C. §§ 401(a)(9)(C), 408(a)(6); 26 C.F.R. § 1.408-8, Q&A-3; IRS Publication 590, at 34 (2014). At the required beginning date, the Traditional IRA owner's required minimum distributions are based on certain December 31 account balances and applicable tables found in Appendix C of IRS Publication 590. *See* IRS Publication 590, at 35-36, 94-110. Such distributions are required because the funds in Traditional IRAs are tax-*deferred*, not tax-*exempt*. Congress did not in-

tend for Traditional IRA owners to permanently avoid taxation for income in those accounts; instead, Congress intended for Traditional IRA owners to pay taxes later in life. The required minimum distributions ensure that, for persons with ordinary life expectancies, they will pay taxes on their income at some point in their lives.

Taken together, these features of a Traditional IRA make it highly tax-advantageous for individuals to delay any withdrawals until they are (a) over age 59½, and (b) no longer working – which typically will mean that they are retired – in order to withdraw funds. And the Traditional IRA affirmatively *requires* an individual to take distributions during the later part of his retirement years. Thus, a Traditional IRA contains "retirement funds."

B. Funds in a Roth IRA are "Retirement Funds."

The Roth IRA differs from the Traditional IRA in that contributions to a Roth IRA are not tax deductible, but withdrawals from a Roth IRA – including any growth in that investment – are generally tax-free. Like a Traditional IRA, however, the Roth IRA is structured so that persons may use the funds within the Roth IRA for retirement. As with Traditional IRAs, Congress has imposed penalties for withdrawals of investment income from a Roth IRA before the age of 59½ (subject to a narrow list of specified exceptions). 26 C.F.R. § 1.408A-6, at A-1(a), (b). To be sure, an individual can generally withdraw the *principal* from a Roth IRA penalty-free at any time.[2]

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[2] *See* 26 C.F.R. § 1.408A-6, at A-5(b) for a technical exception.

This is because that individual has already paid taxes on the principal, so there is no reason to restrict him from withdrawing his own after-tax funds. However, one cannot generally withdraw the earnings from a Roth IRA before the age of 59½ without paying a penalty. The earnings part of a Roth IRA is tax-advantaged – it is tax-exempt income – and so, because Congress gave special tax treatment to the earnings for the purpose of assisting a person in saving for retirement, Congress has imposed a penalty for using that money before retirement age.

Unlike with Traditional IRAs, Roth IRA owners are not required to receive mandatory distributions. 26 C.F.R. § 1.408A-2, at A-2. This is because Roth IRAs are tax-exempt rather than tax-deferred. Thus, for Traditional IRAs, Congress required distributions to limit the ability of persons to defer taxation and to ensure that they paid taxes eventually. In contrast, for Roth IRAs, this consideration does not apply because no tax is being deferred.

Petitioner contends that "[a]n individual may withdraw his contributions to a Roth IRA without penalty for any reason at all," and asserts that in light of this characteristic, Roth IRAs are "all-purpose investment kitties." Pet. Br. 25. This is misleading. First, Petitioner's careful assertion that a person "may withdraw his *contributions* to a Roth IRA," *id.* (emphasis added) obscures the fact that the person may not withdraw the earnings on those contributions without penalty – and the very reason that the Roth IRA is a good investment is that the earnings are tax-free and there are no mandatory distributions for the Roth IRA owner. 26 C.F.R. § 1.408A-6, at A-1(a), (b) (imposing restrictions on dis-

tributions). Second, Roth IRAs are not "all-purpose investment kitties." Before age 59½, the investment income from a Roth IRA cannot be used for "all purposes" without penalty. Rather, the investment income from a Roth IRA can only be used for a narrow set of specified purposes without incurring penalties. *See* 26 C.F.R. § 1.408A-6, at A-1(b)(2). Moreover, when a person withdraws principal from the Roth IRA and spends it on other purposes before age 59½, he is not using the Roth IRA as an "investment kitty"; rather, he is spending the after-tax funds that he has already put into the Roth IRA. Far from being a good investment, spending the principal in a Roth IRA before age 59½ is a financially harmful decision that an individual should only undertake under emergency circumstances, because it reduces that individual's future tax-exempt income. Indeed, the law review article cited in Petitioner's brief makes this very point. Richard L. Kaplan, *Retirement Funding and the Curious Evolution of Individual Retirement Accounts*, 7 Elder L.J. 283, 292 (1999) (cited at Pet. Br. 26) (noting that the "early withdrawal penalty applies to both regular and Roth IRAs in equal measure" and that "[a]s a result, tapping an IRA for preretirement expenditures is a very expensive source of funds").

II. FUNDS IN INHERITED IRAS ARE NOT "RETIREMENT FUNDS."

When an IRA owner dies, the IRA is transferred to the owner's selected beneficiary. An inherited IRA is a nonprobate asset that generally passes by operation of law to the IRA owner's selected beneficiary; it is not a probate asset unless it is payable to the deceased IRA owner's estate. Thus, in effect, the des-

ignated beneficiary of the deceased IRA owner owns the IRA owner's account after the death of the IRA owner. *See* Rev. Proc. 89-52, 1989-2 C.B. 632.

The Internal Revenue Code imposes different tax treatment for inherited IRAs depending on whether the beneficiary is a spouse or a nonspouse. When the beneficiary is a spouse, she is entitled to roll over the IRA into her own account, as if she had established the IRA herself. If she selects this option, then these funds clearly retain their character as "retirement funds." *See* IRS Publication 590, at 18.

In contrast, when the beneficiary is a nonspouse, she may not roll over the IRA into her own account. Rather, the nonspouse beneficiary must re-title the inherited IRA "in a manner that identifies it as an IRA with respect to a deceased individual and also identifies the deceased individual and the beneficiary, for example, 'Tom Smith as beneficiary of John Smith.'" I.R.S. Notice 2007-7, 2007-1 C.B. 395, at A-13. Thus, Petitioner errs in contending that the conversion of an IRA into an inherited IRA requires a "direct transfer of retirement funds" under 11 U.S.C. § 522(b)(4)(C). Pet. Br. 21-22. Rather, the IRA turns into an inherited IRA by direct operation of law. *See* 26 U.S.C. § 408(d)(3)(C)(ii) ("[A]n individual retirement account . . . *shall be treated* as inherited if (I) the individual for whose benefit the account . . . is maintained acquired such account by reason of the death of another individual, and (II) such individual was not the surviving spouse of such other individual" (emphasis added)).

Inherited IRAs are subject to tax treatment that is the polar opposite of the tax treatment of non-

inherited IRAs. There are two fundamental differences between non-inherited IRAs and inherited IRAs. First, an IRA owner is *encouraged* to put money into non-inherited IRAs by getting special tax treatment for such contributions (or, in the case of a Roth IRA, for earnings). But nonspouse beneficiaries are *prohibited* from putting money into inherited IRAs or rolling them over. 26 U.S.C. §§ 219(d)(4), 408(d)(3)(C). This is a marker that funds in inherited IRAs are not intended to be "retirement funds."

Second, as noted above, an IRA owner is ordinarily *prohibited* from withdrawing money from non-inherited IRAs before retirement age without paying a penalty. In contrast, nonspouse beneficiaries may take any or all of their money out of their inherited IRAs at any time without penalty as long as the post-death required minimum distributions are timely received. Moreover, nonspouse beneficiaries are *required* to withdraw money from inherited IRAs regardless of age.

More specifically, Publication 590 contains rules for individuals who inherit IRAs for which the "owner died before [the] required beginning date." Publication 590, at 37. These rules apply to persons who inherit traditional IRAs from persons who died before their required beginning date (*i.e.*, generally April 1 after the calendar year that the owner attains age 70½). In addition, these rules apply to everyone who inherits a Roth IRA. *See id.* at 76. Under these rules, post-death required minimum distributions to a nonspouse designated beneficiary must generally commence in the calendar year after the death of the IRA owner. *See id.* at 36-38.

Typically, nonspouse designated beneficiaries receive payouts based on their own life expectancy, unless they choose to accelerate such payments. The following example illustrates how such payouts occur: Marvin, an IRA owner, died at age 68 on June 1, 2012. The individual designated beneficiary of his IRA account is his daughter, Margaret, who survived him. Margaret's date of birth was October 15, 1973. *See* Seymour Goldberg, *Inherited IRA's: What Every Practitioner Must Know* ("Goldberg"), example 5, at 34-35 (1st ed. 2013).

Because Marvin died in 2012 at age 68, he did not have to receive any required minimum distributions for the year of his death. This is so because he died prior to his required beginning date. His required beginning day is generally April 1 after the calendar year that Marvin attains age 70½. *See* Goldberg, at 22.

Margaret can generally use the life expectancy method in determining her required minimum distributions from Marvin's deceased IRA account. Because Margaret attains age 40 in the calendar year 2013, she determines her required minimum distributions from Marvin's deceased IRA account commencing in the calendar year 2013 over a term-certain period of 43.6 years. *See* Goldberg, example 5, at 34-35.

The reason that owners of an inherited IRA may receive payouts distributed over their lives, rather than receiving an immediate lump-sum payout, is to avoid the adverse tax consequences associated with a lump-sum payout that may push the taxpayer into a higher tax bracket. The facts of this case illustrate

that possibility. Petitioner's inherited IRA was worth nearly $300,000. If Petitioner was forced to take the entire IRA as a lump-sum payment, then portions of that IRA could possibly be taxed at a 33% tax rate, which may have been higher than Petitioner's mother's tax rate at any point in her life. Given that the purpose of the traditional IRA is to tax the funds at a lower rate when they are distributed than when they are earned, this outcome would be unfair and defeat the purpose of the IRA. This consideration does not apply to tax-exempt Roth IRAs, but Congress elected to give parallel tax treatment of all inherited IRAs rather than create distinct tax rules depending on the particular type of IRA at issue.

Relying on the ability to distribute inherited IRA distributions over a nonspouse beneficiary's life expectancy, Petitioner notes that it is theoretically possible for an inherited IRA to increase in value in a given year. This will occur if the rate of return for the IRA exceeds the value of the minimum distribution in a given year. *See* Pet. Br. 27-29. Petitioner fails to mention, however, that if this occurs, the nonspouse beneficiary will be forced to withdraw even more money the next year to ensure that the IRA is depleted by the end of her life expectancy. In the above example, suppose Margaret, with a life expectancy of 43.6 years, inherited a $300,000 IRA. In the first year, she will be required to withdraw $300,000 / 43.6 = $6,881. Suppose the IRA grows at a 2.3% rate, however, so that the IRA earns $6,900 in interest. Despite the distribution, the IRA will grow to $300,000 + $6,900 - $6,881 = $300,019. However, the next year, Margaret's remaining term-certain life expectancy is now 42.6 years. Accordingly, she must

withdraw more money than the previous year: $300,019 / 42.6 = $7,043. If the IRA continues to grow at a 2.3% interest rate, it will earn $6,900 in interest, and so the value of Margaret's IRA will decrease: $300,019 + $6,900 $7,043 = $299,876. The next year, Margaret will be required to withdraw $299,876 / 41.6 = $7,209, and the value of the IRA will decrease even more. Moreover, the distributions will continue to rise each year in light of Margaret's decreasing term-certain life expectancy, until the IRA is fully depleted. More generally, although an inherited IRA may temporarily increase if the rate of return exceeds the required annual distribution, these temporary increases in value will quickly be offset by increases in required annual payouts, regardless of whether the nonspouse beneficiary has reached retirement age.

Thus, Petitioner is incorrect to assert that "[t]he Internal Revenue Code thus allows an IRA to operate similarly in the hands of a beneficiary as in the hands of the initial owner: namely, as a tax-exempt account that can increase in value leading up to its holder's retirement," Pet. Br. 28. The Internal Revenue Code does not treat inherited IRAs "similarly" to ordinary IRAs; ordinary IRAs grow in value because persons can put money in and are restricted from taking money out without penalty at certain ages, and inherited IRAs grow in value only as a temporary byproduct of earnings and low initial minimum distributions due to a long life expectancy. Indeed, there are perhaps no two types of accounts that are given *less* similar tax treatment than ordinary and inherited IRAs.

Petitioner appears to argue that an inherited IRA contains "retirement funds" merely due to the theoretical possibility that an inherited IRA may temporarily increase in value. But if that were true, *any* account, including a simple checking account, would automatically contain "retirement funds," merely because of the possibility that it could grow under some set of circumstances. In fact, a checking account actually is more like a retirement account than an inherited IRA, because a person may add money to the checking account and is not required to take mandatory distributions. In sum, if an inherited IRA contains "retirement funds," then all funds are retirement funds. That cannot be the law.

The tax rules that apply when the nonspouse beneficiary dies further establish that an inherited IRA is not a "retirement account." A nonspouse beneficiary may select a successor-in-interest to her rights to receive the post-death required minimum distributions from the original IRA account. I.R.S. Priv. Ltr. Rul. 199936052 (June 16, 1999). The beneficiaries of a deceased beneficiary continue to use the remaining term-certain period of the designated beneficiary. See IRS Publication 590, at 37. This is true regardless of whether the successor-in-interest has reached retirement age. In the above example, suppose that Margaret dies at age 60 in 2033 and then leaves the inherited IRA to her grandson Michael. Because Margaret's remaining term-certain life expectancy at the time of her death at age 60 is 23.6 years (*i.e.*, 43.6 minus 20 years), Michael will receive the remainder of the funds in the IRA commencing in 2034 over a 22.6-year period after he inherits the IRA. This will occur regardless of whether Michael has

reached retirement age. For example, if Michael is 20 years old in 2033 when he inherits his grandmother's IRA, all the funds in the inherited IRA will be distributed by the time he turns 44. It is difficult to regard these funds as "retirement funds" when the Internal Revenue Code often will make it impossible for the successor-in-interest to receive those funds during retirement.

III. The Same Principles Apply To Other Types Of Retirement Accounts.

As noted above, the Bankruptcy Code permits a debtor to exempt "retirement funds to the extent that those funds are in a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986." This provision applies not only to IRAs (which are governed by Sections 408 and 408A) but other types of retirement accounts, such as employer-provided retirement funds (Section 401), employee annuity funds (Section 403), and various plans by state and local governments and certain tax-exempt employers (Sections 414 and 457).

The taxation of these accounts varies in its particulars, but has one common characteristic: the original owner of such an account may add money and use the account to save for retirement, whereas the nonspouse beneficiary may not add money and is generally required to commence immediate distributions. For instance, the owner of a "401(k)" account may add $17,500 per year to the account, *see* I.R.S. News Release IR-2012-77 (Oct. 18, 2012), and generally cannot receive distributions until he turns 59½, 26 U.S.C. § 401(k)(2)(B)(i)(III). In contrast, the own-

er of an inherited 401(k) is subject to the payment limitations in the plan document, which typically require the beneficiary to withdraw the funds within a relatively limited number of years (*e.g.*, 5 or 10 years). As a result, individuals who inherit such accounts typically transfer the funds in those accounts into an inherited IRA, so that they may at least take distributions over their life expectancy as explained above.[3] Thus, for *any* inherited retirement account, the Internal Revenue Code generally requires the beneficiary to commence distributions of portions of those accounts after the death of the IRA owner. This tax treatment is inconsistent with the characterization of these accounts as containing "retirement funds."

CONCLUSION

For the foregoing reasons, the judgment of the Seventh Circuit should be affirmed.

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[3] Such transfers were not permitted, however, when 11 U.S.C. § 522(b)(3)(C) was enacted in 2005; they became legal pursuant to a subsequent amendment of 26 U.S.C. § 402(c)(11). *See* I.R.S. Notice 2007-7, 2007-1 C.B. 395, § V; Goldberg, at 25.

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AMICUS CURIAE BRIEF

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BRANDON C. CLARK AND
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WILLIAM J. RAMEKER, TRUSTEE, *et al.*,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

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INTEREST OF *AMICUS CURIAE*

The National Association of Bankruptcy Trustees ("NABT") is a non-profit association formed in 1982 to address the needs of chapter 7 bankruptcy trustees throughout the country, and to promote the effectiveness of the bankruptcy system as a whole.[1] NABT is a premier national professional association of bankruptcy trustees. Of the approximately 1,100 bankruptcy trustees currently receiving new cases, 835 are NABT members. As a result, NABT is intimately familiar with the application of the Bankruptcy Code in the practical context of administration of trustee cases. NABT is also active in shaping legislation and has a strong interest in ensuring proper interpretation of the Bankruptcy Code[2] as it affects trustees and the cases they administer.

Chapter 7 trustees' participation in the federal bankruptcy system, and specifically performance of their duties under Code section 704, serves two fundamental bankruptcy policies: providing honest

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[1] All parties have consented to the filing of this *amicus* brief. No counsel for a party authored this brief in whole or in part, and no such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amicus curiae* has made a monetary contribution intended to fund its preparation or submission.

[2] United States Bankruptcy Code, 11 U.S.C. § 101 *et seq.* (hereinafter "Bankruptcy Code" or "Code"). Unless otherwise noted, all statutory citations in text are to provisions of the Code. Likewise, any references to "Rules" or "Bankruptcy Rules" are references to the Federal Rules of Bankruptcy Procedure.

debtors a fresh start and liquidating non-exempt assets in order to distribute the proceeds equitably among the debtor's creditors. This case is important to trustees because allowing a claim of exemption in an inherited IRA does not give debtors a fresh start, but rather provides debtors with an unintended free pass. Upholding this exemption claim defeats creditors' rights to an equitable distribution from a significant asset that does not support the debtor or the debtor's spouse and dependents in retirement and is contrary to the retirement funds exemption contained in the Code's exemption scheme.

This issue has been litigated in the bankruptcy and appellate courts in various jurisdictions throughout the country with differing results. The outcome is of national importance to trustees and the bankruptcy system generally, and NABT therefore submits this brief in support of the chapter 7 trustee and affirmance of the decision of the U.S. Court of Appeals for the Seventh Circuit denying the debtors' exemption in an inherited IRA.

SUMMARY OF ARGUMENT

This is a statutory construction case. The Court must construe the plain meaning of the phrase "retirement funds" in the Bankruptcy Code, and then determine whether a particular asset, known as an

inherited individual retirement account, described in the Internal Revenue Code ("IRC"),[3] constitutes 'retirement funds' that a debtor may exempt from her bankruptcy estate.

Individual retirement account ("IRA") funds transferred to a non-spouse beneficiary by virtue of the account holder's death lose their fundamental character as retirement funds. The IRC permits these funds to be maintained in what the IRC terms an "inherited individual retirement account" ("Inherited IRA").[4] Inherited IRAs are very different from ordinary IRAs. IRC rules governing Inherited IRAs require that distributions from an Inherited IRA begin promptly regardless of the beneficiary's age; prohibit tax-deductible contributions to such accounts and "rollovers" of such funds into an ordinary IRA; and permit the beneficiary to withdraw the entire account balance at any time with no penalty.

An Inherited IRA is thus a creature of the IRC designed specifically and solely to grant favorable tax treatment to funds that might otherwise be subject to immediate taxation at a higher marginal tax rate. After the donor's death and transfer to a non-spouse beneficiary, the resulting Inherited IRA is simply a tax-deferred savings account unrelated to the beneficiary's retirement. Thus, the funds in an Inherited IRA do not constitute "retirement funds" within the

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[3] 26 U.S.C. § 1, *et seq.*

[4] 26 U.S.C. § 408(d)(3)(C).

ordinary meaning of that phrase and are not exempt under section 522(b)(3)(C) of the Bankruptcy Code.

ARGUMENT

I. The Bankruptcy Code's Exemption Provisions Balance the Bankruptcy Policies of a Fresh Start for Debtors and Equitable Distribution to Creditors.

"The principal purpose of the Bankruptcy Code is to grant a fresh start to the honest but unfortunate debtor." *Marrama v. Citizens Bank of Mass.*, 549 U.S. 365, 367 (2007). "Exemptions [ ] are part and parcel of this fundamental bankruptcy concept of a 'fresh start.'" *Schwab v. Reilly*, 560 U.S. 770, 791 (2010). Nonetheless, in the Bankruptcy Code Congress has balanced the fresh start policy against the equally fundamental bankruptcy goal of facilitating the fair and orderly repayment of creditors. *See Burlingham v. Crouse*, 228 U.S. 459, 473 (1913) ("twofold purpose of [bankruptcy is] to convert the estate of the bankrupt into cash and distribute it among creditors, and then to give the bankrupt a fresh start with such exemptions and rights as the statute left untouched").

An individual debtor may claim certain estate property as exempt, protecting it from liquidation by the trustee to satisfy creditors' claims. *See* 11 U.S.C. § 704(a)(1); § 522(b). Under section 522(b)(2) of the Bankruptcy Code, a debtor may elect to take the federal bankruptcy exemptions set out in the Code at

section 522(d), unless applicable state law prohibits such an election. 11 U.S.C. § 522(b)(2). Federal exemptions fall into 12 property categories; in most a debtor asserts an exemption claim to her interest in an asset in a particular category, subject to specified dollar limits. *See Schwab v. Reilly*, 560 U.S. at 782. Among the categories are real property used as a residence, not to exceed $22,975 (§ 522(d)(1)); one motor vehicle, not to exceed $3,675 (§ 522(d)(2)); household furnishings, not to exceed $12,550 in the aggregate (§ 522(d)(3)); and jewelry, not to exceed $1,550 in the aggregate (§ 522(d)(4)).[5]

Alternatively, a debtor may elect the applicable state's exemptions pursuant to section 522(b)(3) of the Bankruptcy Code. 11 U.S.C. § 522(b)(3). The exemption at issue here, which may be claimed by all debtors, whether they elect federal or state exemptions, is the retirement funds exemption provided in section 522(b)(3)(C) and section 522(d)(12), which exempts "retirement funds to the extent that those funds are in a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986." 11 U.S.C. § 522(b)(3)(C), (d)(12); *see also* § 522(n) (placing monetary limits on state and federal claims of exemptions in IRAs).

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[5] Dollar limits to exemptions are subject to Consumer Price Index adjustments. *See* 11 U.S.C. § 104.

The choices Congress has made in imposing limitations on the type and amount of exemptions debtors may claim reflect this balance between ensuring that debtors retain sufficient assets to meet their basic needs and that creditors receive fair treatment. *See Schwab v. Reilly*, 560 U.S. at 791-92; *see also Rousey v. Jacoway*, 544 U.S. 320, 325 (2005). Indeed, this Court has observed that an improper balance can "threaten to convert a fresh start into a free pass." *Schwab*, 560 U.S. at 791.

The specific issue in this case is whether monies the debtor holds in an Inherited IRA as a result of her mother's death are exempt from the bankruptcy estate under section 522(b)(3)(C). Debtor Heidi Heffron-Clark's mother established an IRA for her support upon retirement, naming Ms. Heffron-Clark as a beneficiary. Upon her mother's death, Ms. Heffron-Clark acquired a beneficial interest in the funds and the account automatically became an Inherited IRA.[6] *See Clark v. Rameker (In re Clark)*, 466 B.R. 135, 136 (W.D. Wis. 2012). Beginning in 2002 the debtors, who had not retired, began taking monthly distributions from the Inherited IRA, and eight years later the debtors commenced this chapter 7 proceeding. *Id.* The debtors claimed that the funds in the Inherited IRA were exempt under Code section 522(b)(3)(C).

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[6] Ms. Heffron-Clark subsequently transferred the funds to a new account, which is also an Inherited IRA.

II. Plain Meaning and Functional Analysis Reveal that Inherited IRAs Do Not Constitute Exempt Retirement Funds Under the Bankruptcy Code.

"[T]he starting point for interpreting a statute is the language of the statute itself." *Consumer Prod. Safety Comm'n v. GTE Sylvania, Inc.*, 447 U.S. 102, 108 (1980). Thus, interpretation of the Bankruptcy Code begins "where all such inquiries must [ ] with the language of the [Code] itself." *Ransom v. FIA Card Servs., N.A.*, ___ U.S. ___, 131 S. Ct. 716, 723-24 (2011), *quoting United States v. Ron Pair Enterprises, Inc.*, 489 U.S. 235, 241 (1989). If the Bankruptcy Code does not define a term, the Court looks to the term's "ordinary meaning." *Hamilton v. Lanning*, 560 U.S. 505, 512 (2010); *Ransom v. FIA Card Servs., N.A.*, 131 S. Ct. at 724. The Court also considers the structure and purposes of the Code when interpreting its provisions. *See Ransom v. FIA Card Servs., N.A.*, 131 S. Ct. at 724; *Hamilton v. Lanning*, 560 U.S. at 516 (Court does not ignore past bankruptcy practice absent Congress's clear intention). In short, the Court examines the "text, context, [and] purpose" of the Bankruptcy Code in conducting its statutory analysis. *Ransom v. FIA Card Servs., N.A.*, 131 S. Ct. at 726.

A. The plain meaning of the phrase "retirement funds" excludes money not set aside for a debtor's retirement.

In instances where Congress has not defined a specific term in the Bankruptcy Code by, for instance,

citing to definitions elsewhere in the United States Code, this Court has applied statutory construction principles. *See United States v. Reorganized CF & I Fabricators of Utah, Inc.*, 518 U.S. 213, 220 (1996). In this case, the ordinary meaning of the phrase "retirement funds," taken together with the functional attributes of an Inherited IRA as set out in the IRC, compels the conclusion that Inherited IRAs do not contain "retirement funds." The phrase "retirement funds" is not defined in the Bankruptcy Code. Accordingly, one must look to the term's ordinary meaning. *Ransom v. FIA Card Servs., N.A.*, 131 S. Ct. at 724.

The ordinary, dictionary meaning of the adjective "retirement" is "of, relating to, or designed for retired persons." Merriam-Webster Dictionary http://www.merriam-webster.com/dictionary/retirement.[7] Under that definition, Inherited IRAs do not contain retirement funds. The Inherited IRA at issue here does not hold funds for the debtor's retirement, or anyone else's, because once the debtor's mother died and the interest in the funds passed to the debtor, the funds were no longer funds "of, relating to, or designed for [a] retired person," as they were in the hands of the debtor's mother.

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[7] The noun "retirement" is defined as "the act of retiring or condition of being retired." Webster's New Unabridged Dictionary (1989).

This plain meaning of "retirement funds" comports with the Code's underlying dual policies of a fresh start for debtors and an equitable distribution of non-exempt property for creditors. Consistent with this overall balance between the interests of debtors and creditors struck in the Bankruptcy Code, the purpose of section 522(b)(3)(C) is to protect the debtor's fresh start by securing funds needed for the debtor's retirement. *See* 4 *Collier on Bankruptcy* ¶ 522.10 (16th ed. rev. 2012). Thus, both the ordinary meaning of the term "retirement funds" and the exemption's purpose require that the debtor hold such funds in anticipation of retiring, and in this case, "the debtor's Inherited IRA does not contain *anyone's* 'retirement funds.'" *In re Clark*, 450 B.R. 858, 863 (Bankr. W.D. Wis. 2011) (emphasis in original).

B. The functional attributes of an Inherited IRA under the Internal Revenue Code demonstrate that it does not constitute "retirement funds".

That the IRC calls Inherited IRAs "individual retirement accounts" does not change this analysis. This Court has made clear that the Bankruptcy Code is not presumed to adopt the same meaning given a term in the IRC unless Congress has specifically so provided. *See United States v. Reorganized CF & I Fabricators of Utah, Inc.*, 518 U.S. at 220 (analyzing whether a particular exaction, not called a "tax" in the tax statute creating it, was a tax for purposes of section 507). In these instances the Court " . . . look[s]

behind the label placed on the exaction and rest[s] its answer directly on the operation of the provision using the term in question." *Id.* That is, the Court follows a functional analysis. *Id.* at 224 (observing no congressional intent to make characterizations in IRC binding and "no specific provision that would relieve [the Court] from making a functional examination" of the tax statute at issue); *see also City of New York v. Feiring*, 313 U.S. 283, 285 (1941) (examining state law to determine priority of a state tax "not to learn whether they have denominated the obligation a 'tax' but to ascertain whether its incidents are such as to constitute a tax within the meaning of [the Bankruptcy Act]"). Accordingly, an Inherited IRA, notwithstanding its name, does not constitute "retirement funds" if it does not function as a retirement account.

An analysis of the manner in which Inherited IRAs function under federal tax law reveals that they do not serve a retirement purpose. Rather, they are designed to ensure that persons who inherit funds do not face an immediate lump-sum tax bill, which might elevate them into a higher tax bracket. The legislative history of the Pension Protection Act of 2006, 120 Stat. 1083, which, among other things, amended IRC provisions relating to Inherited IRAs, makes that purpose clear. *See* 26 U.S.C. § 408(d). The legislation permitted non-spouse beneficiaries, in addition to surviving spouses (who could already do so), to roll over lump-sum distributions from inherited qualified retirement plans into an Inherited IRA. *See* Internal Revenue Service, U.S. Dep't of the

Treasury, Pub. 590 (2013). House Report 109-232(II) of the Pension Protection Act of 2006 offers this explanation for extending rollovers to non-spouse beneficiaries:

> The Committee understands that, in practice, many plans provide that distributions to a beneficiary who is not the surviving spouse of the participant are paid out soon after the death of the participant in a lump sum, even though the minimum distribution rules would permit a longer payout period. The Committee understands that many beneficiaries would like to avoid the adverse tax consequences of an immediate lump sum, as well as take advantage of the opportunity to receive periodic payments for life or over the beneficiary's lifetime. The Committee wishes to provide beneficiaries with additional flexibility regarding timing of distributions, consistent with the minimum distribution rules applicable to nonspouse beneficiaries.

H.R. Rep. 109-232(II), 147. *See also In re Clark*, 450 B.R. at 864.

Congress did not create Inherited IRAs as a mechanism to assist non-spouse beneficiaries to fund their retirement. To the contrary, Congress enacted Inherited IRAs as a mechanism to help non-spouse beneficiaries avoid adverse tax consequences caused by an immediate lump sum payout. The IRC's statutory scheme for Inherited IRAs manifests this intent.

Monies contributed to and earned on investments in a traditional IRA are excluded from income taxation when earned and distributions or payments are taxed upon withdrawal. 26 U.S.C. § 408(d)(1). When the owner of an IRA dies with funds still in the IRA, those funds become the property of a beneficiary designated by the deceased owner. 26 U.S.C. § 401(a)(9). At that point, whether the beneficiary retitles the account or transfers it, the IRC's treatment of the funds depends on whether the beneficiary is the decedent's spouse or a non-spousal beneficiary.

A surviving spouse named as beneficiary of an IRA may treat the deceased spouse's IRA as her own by designating herself as the account owner; treat the IRA as her own by rolling her deceased spouse's IRA into her own IRA; elect the same treatment as a non-spousal beneficiary; or disclaim the IRA entirely. 26 U.S.C. § 401(a)(9)(B)(iv) (surviving spouse as beneficiary); 26 U.S.C. § 408(d)(3) (rollover status). *See also* Internal Revenue Service, U.S. Dep't of the Treasury, Pub. 590 (2013) at 18; *In re Jarboe*, 365 B.R. 717, 720, n.5 (Bankr. S.D.Tex. 2007). Thus, a surviving spouse who is the sole beneficiary of a deceased spouse's IRA and elects treatment as the owner determines the required minimum distribution as if she were the owner. Internal Revenue Service, U.S. Dep't of the Treasury, Pub. 590 (2013) at 18.

Special rules govern IRA distributions to a surviving spouse. In general, a traditional IRA owner must start receiving distributions in the calendar year following the year she reaches age 70½. *Id.* at

37. If the owner dies before the required beginning date, the surviving spouse may delay distributions until the year the owner would have reached age 70½; if the surviving spouse dies before these distributions must begin, then her beneficiaries are required to treat her (*i.e.*, the surviving spouse of the original owner) as the owner when determining their distributions. *Id.* at 37-38.

Different rules govern non-spouse beneficiaries of IRAs. Aside from allowing the recipient to disclaim the IRA, the IRC provides no comparable options to non-spouse beneficiaries. A non-spouse beneficiary of an Inherited IRA cannot make pre-tax contributions to the Inherited IRA and cannot roll the funds in the Inherited IRA into the beneficiary's own retirement account. 26 U.S.C. § 408(d)(3)(C). The beneficiary may withdraw all of the funds in the Inherited IRA at any time without penalty. 26 U.S.C. § 408(d). Finally, a non-spouse beneficiary must begin taking required distributions from the Inherited IRA by the end of the calendar year after the donor's death, or else withdraw the entire balance of the account within five years. 26 U.S.C. § 402(c)(11)(A)(iii).

The differences in treatment accorded spouse and non-spouse beneficiaries evinces that while Congress encouraged surviving spouses to augment their existing retirement funds with funds transferred from deceased spouses, it did not extend or intend the same treatment to transfers between deceased IRA owners and their non-spouse beneficiaries. IRAs pass

to a donor's surviving spouse as the functional equivalent of the IRA once held by the deceased spouse. On the other hand, Congress did not create Inherited IRAs to function as IRAs in the hands of a non-spouse beneficiary. Rather, Inherited IRAs do not function as anyone's "retirement funds" within the meaning of sections 522(b)(3)(C) and 522(d)(12) of the Bankruptcy Code, and therefore they are not exempt.

C. The Seventh Circuit correctly held that Inherited IRAs do not constitute retirement funds subject to exemption under section 522(b)(3)(C).

The Seventh Circuit panel's decision below adhered to proper rules of statutory construction. The court determined that the statute required satisfaction of two factors: "the *conjunction* of tax deferral and assets' status as 'retirement funds;' that an inherited IRA provides tax benefits is not enough." *In re Clark*, 714 F.3d 559, 561 (7th Cir. 2013) (emphasis in original). These are the same two factors that other federal courts have identified. The Seventh Circuit found that the plain meaning of the phrase "retirement funds" is "funds set aside for retirement." *Id.* at 559, *citing* 11 U.S.C. § 522(b)(3)(C) and (d)(12). Looking behind the label of the property right in question, the court of appeals rested its analysis on the provisions of the IRC governing the operation of Inherited IRAs. *See In re Clark* 714 F.3d at 560; *see also United States v. Reorganized CF & I Fabricators of Utah, Inc.*, 518 U.S. at 220 (courts look to the function and

operation of the tax laws, rather than labels, in determining the meaning of the Bankruptcy Code).

The Seventh Circuit's statutory analysis contrasted an IRA in the hands of the original owner with one in the hands of a non-spouse beneficiary. *In re Clark*, 714 F.3d at 560. The court's analysis focused on the statutory prohibitions against augmenting an Inherited IRA with additional contributions and, also, on the inability to roll over funds from an Inherited IRA into the beneficiary's own IRA. *Id. citing* 26 U.S.C. § 408(d)(3)(C). It considered the requirement that the non-spouse beneficiary take distributions notwithstanding her age. *Id. citing* 26 U.S.C. § 402(c)(11)(A). And it explained the sole legislative purpose for Inherited IRAs, which "allow the [non-spouse] beneficiary to avoid paying income tax immediately after the original owner's death . . . while limiting the duration of tax deferral." *Id. See* H.R. Rep. 109-232(II), 147. After examining an Inherited IRA's functional attributes, the Seventh Circuit properly concluded that Inherited IRAs do not constitute retirement funds and that "[w]e do not think the question [is even] close." *In re Clark*, 714 F.3d at 562.

III. The Fifth Circuit and Petitioners Provide an Incomplete and Flawed Statutory Construction Analysis.

A. The Fifth Circuit's plain meaning analysis did not look beyond the Code and is incomplete.

The Fifth Circuit Court of Appeals recently considered whether an Inherited IRA constitutes retirement funds as that phrase is used in section 522(d)(12).[8] *In re Chilton*, 674 F.3d 486, 488-89 (5th Cir. 2012). The *Chilton* court, like the *Clark* court, identified two factors to consider: whether the funds claimed as exempt are "retirement funds" and whether "those retirement funds [are] in an account that is exempt from taxation" under the specific IRC provisions enumerated in the statute, including 26 U.S.C. § 408. *Id.* at 488.

The Fifth Circuit began its analysis by observing that the phrase "retirement funds" is not defined in the Bankruptcy Code. To determine the meaning of this phrase, the court looked to its plain meaning, and then consulted a dictionary for each term in the phrase. In doing so, it interpreted "retirement funds" to mean "funds set apart for retirement." It then observed that since the Code does not specify whose retirement funds qualify for exemption, "we see no reason to interpret the statutory language differently

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[8] As indicated, the language in section 522(b)(3)(C) is identical to the language in section 522(d)(12).

from its plain meaning." Based on this rationale, it held that funds in an Inherited IRA are exempt under section 522(d)(12). *Id.* at 489.

The *Chilton* court adopted the reasoning of *In re Nessa*. *See In re Nessa*, 426 B.R. 312 (8th Cir. BAP 2010). The *Nessa* court held that section 522(d)(12) requires that the account in question "be comprised of retirement funds, but it does not specify that they must be the *debtor's* retirement funds." *Id.* (emphasis in original). It further reasoned that to follow the trustee's construction " . . . would impermissibly limit the statute beyond its plain language." *Id. citing U.S. v. Ron Pair Enterprises*, 489 U.S. 235 at 241.[9]

The Fifth Circuit did not confine itself to interpretation of section 522(b)(3)(C). It also gleaned further support from section 522(b)(4), opining that "the defining characteristic of 'retirement funds' is the purpose they are 'set apart' for, not what happens after they are 'set apart.'" *In re Chilton*, 674 F.3d at 489. Section 522(b)(4) provides that " . . . a direct transfer of retirement funds from 1 fund or account that is exempt from taxation under section . . . 408 . . . of the Internal Revenue Code of 1986 . . . shall not cease to qualify for exemption under paragraph (3)(C)

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[9] *See also In re Kuchta*, 434 B.R. 837, 843-44 (Bankr. N.D. Ohio 2010); *In re Tabor*, 433 B.R. 469, 475-76 (Bankr. M.D. Pa. 2010); *In re Thiem*, 443 B.R. 832, 843-44 (Bankr. D. Ariz. 2011); *In re Weilhammer*, No. 09-15148, 2010 WL 3431465, at *4-*5 (Bankr. S.D. Cal. August 30, 2010); *In re Stephenson*, 2011 WL 6152960, at *2-*3 (E.D. Mich. 2011).

or subsection (d)(12) by reason of such direct transfer." The *Chilton* court thus extrapolated from section 522(b)(4)'s language that a direct transfer of "retirement funds" does not alter their status as retirement funds. *In re Chilton*, 674 F.3d at 489.

Section 522(b)(4) refers to trustee-to-trustee retirement funds transfers, but an Inherited IRA need not result from such a transfer. Upon the donor's death, the Inherited IRA passes to a designated non-spouse beneficiary, who may transfer it to another IRA maintained in the decedent's name for the beneficiary, or the beneficiary may retain the so-called inheritance in the existing account in the decedent's name for the beneficiary, that is, under the same circumstances. *See* Internal Revenue Service, U.S. Dep't of the Treasury, Pub. 590 (2013) at p. 22. If a retirement fund's defining characteristic is that it is set apart for retirement, not what happens after a donor sets the funds apart, resort to section 522(b)(4) becomes unnecessary because an Inherited IRA does not require a transfer. Moreover, if an Inherited IRA does not constitute retirement funds subject to section 522(b)(3), it does not constitute retirement funds – transferred or not – subject to section 522(b)(4).

The *Chilton* court's cramped reasoning ignores the broader statutory context of the retirement funds exemption. The court failed to look behind the label placed on the term "Inherited IRA" and examine the way in which Inherited IRAs function under the IRC. *Chilton* and other lower courts' attempts to construe

the retirement funds exemption by focusing on the provision's text in isolation, armed only with a dictionary, and without understanding the nature of an Inherited IRA under federal tax law, is inconsistent with this Court's admonition to examine the "text, context, and purpose" of the statute to determine the drafters' intent. *Ransom v. FIA Card Servs., Inc., N.A.*, 131 S. Ct. at 726.

B. Petitioners rely on skewed policy considerations.

According to petitioners, the contents of an IRA constitute "retirement funds" by virtue of being deposited in an individual retirement account. "Once funds have been set aside in a retirement fund . . . they continue to be 'retirement funds' within the meaning of the exemption as long as they remain in such an account." Pet. Br. at p. 20. This bald pronouncement does not withstand scrutiny because it fails to reckon with functional attributes of Inherited IRAs, and in particular the limitations affecting transfers to other retirement accounts, additions to an Inherited IRA, and payout schedules notwithstanding the non-spouse beneficiary's retirement status. Section 522(b)(3)(C) requires examining the manner in which an Inherited IRA functions under the IRC in order to determine whether an Inherited IRA constitutes "retirement funds" as Congress used that phrase in the Bankruptcy Code.

Rather than doing so, petitioners offer expansive policy justifications for why the Court should interpret "retirement funds" to include Inherited IRAs. Pet. Br. at pp. 24-31. In fact, however, permitting debtors to exempt Inherited IRAs is inconsistent with Congress's decision to balance debtors' basic needs with the legitimate claims of creditors.

Here, if the Seventh Circuit's decision below is overturned, the debtor will obtain a discharge and exit bankruptcy with approximately $200,000 in funds unencumbered by any ordinary retirement fund strictures. This is not what Congress intended when enacting the retirement funds exemption provisions. According to petitioners, interpreting the "retirement funds" exemption to cover an Inherited IRA would permit them to become "available to beneficiaries as long-term financial planning tools (and even as a means of funding their own retirements)." Pet. Br. at p. 26. But an Inherited IRA only springs into existence upon the original owner's death, when the interest in the funds passes to the designated non-spouse beneficiary. Only a gambler or seer would attempt to predict how long an IRA's originator survives, whether any balance will remain upon the originator's death, and whether the originator will keep the non-spouse beneficiary designee at all. Plainly, an Inherited IRA plays no role in prudent retirement planning. It is merely a means of deferring taxes on inherited money, and not "retirement funds" as Congress intended that phrase to be used in the Code's exemption provisions.

CONCLUSION

For the reasons cited herein, *Amicus Curiae*, the National Association of Bankruptcy Trustees, respectfully requests that the Court affirm the decision below.

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AMICUS CURIAE BRIEF

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BRANDON C. CLARK AND HEIDI K. HEFFRON-CLARK,
Petitioners,

v.

WILLIAM J. RAMEKER, TRUSTEE, ET AL.,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF OF THE NATIONAL ASSOCIATION OF CONSUMER BANKRUPTCY ATTORNEYS AS AMICUS CURIAE IN SUPPORT OF PETITIONERS

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INTEREST OF AMICUS CURIAE

The National Association of Consumer Bankruptcy Attorneys, or NACBA, is a non-profit organization of more than 3,500 consumer bankruptcy attorneys practicing throughout the country. Incorporated in 1992, NACBA is the only nationwide association of attorneys organized specifically to protect the rights of consumer bankruptcy debtors.

Among other things, NACBA works to educate the bankruptcy bar and the community at large on the uses and misuses of the consumer bankruptcy process. NACBA also advocates for consumer debtors on issues that cannot be addressed adequately by individual member attorneys. NACBA has filed amicus briefs in this Court in several cases involving the rights of consumer debtors. *See, e.g.*, *Schwab v. Reilly*, 560 U.S. 770 (2010); *United States Aid Funds, Inc. v. Espinosa*, 559 U.S. 260 (2010).

The resolution of the question presented in this case is of substantial importance to NACBA. The Bankruptcy Code permits individual debtors to exempt from their bankruptcy estate certain property which either Congress or a State's legislature has deemed worthy of special protection, thereby putting that property beyond the reach of the trustee and creditors. In consumer bankruptcy cases, exemptions serve the overriding purpose of helping individual debtors obtain a fresh start. In 2005, Congress enacted a broad, uniform exemption for all types of tax-favored, retirement plans to eliminate uncertainty then existing in the law around the country. The uniformity and clarity that Congress achieved with the new statutory language has been muddied by the court of appeals decision below, and its judicial carve out for "inherited IRAs" from the

exemption. The decision injects uncertainty into the scope of the retirement fund exemption and opens up a host of practical problems upon which NACBA has a unique perspective.[1]

SUMMARY OF ARGUMENT

I. Through the Bankruptcy Clause of the U.S. Constitution, Congress is given the power to adjust debtor-creditor relationships. U.S. CONST., art. I, § 8, cl. 4. In furtherance of that power, Congress determines, among other things, what property a debtor may shield from his creditors in bankruptcy. *See* 11 U.S.C. § 522. Congress has determined that this protected, or exempt, property is fundamental to the debtor's fresh start provided by bankruptcy law.

At issue in this case is an exemption enacted by Congress in 2005, which allows bankruptcy debtors to keep, free of creditors' claims, "retirement funds to the extent that those funds are in a fund or account that is exempt from taxation under section 401, 403 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986." 11 U.S.C. §§ 522(b)(3)(C), 522(d)(12). Congress enacted this exemption in order to provide a uniform exemption for all types of tax-favored retirement plan assets in bankruptcy. The exemption is both straightforward and broad. It has only two requirements: 1) the funds must be re-

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[1] No counsel for a party authored this brief in whole or in part, and no person or entity other than NACBA, its members, and its counsel made any monetary contribution toward the preparation or submission of this brief. Petitioner's written consent for the submission of this brief is on file with the Clerk of the Court. A letter of consent from the Respondent accompanies the brief.

tirement funds, and 2) the funds must be in an account exempt from taxation under certain sections of the Internal Revenue Code. Further, Congress has specified that the direct transfer (*i.e.*, a trustee-to-trustee transfer) of funds from one tax-exempt account to another tax-exempt account does not disqualify the funds from exemption. 11 U.S.C. § 522(b)(4)(C). Moreover, nothing in the transfer provision requires that the transferee account be maintained for the debtor's retirement or that the debtor must have herself saved the funds in the account in contemplation of retirement.

Here, the retirement funds of Ruth Heffron were in an IRA—one of the enumerated types of tax-exempt accounts listed in the statute. Upon Ruth's death, those funds passed to her beneficiary and daughter, Heidi Heffron-Clark. The funds were subsequently moved to another tax-exempt account via a trustee-to-trustee transfer. In Heidi's later bankruptcy, she properly exempted these funds because they squarely fit within the requirements for exemption set forth by Congress.

II. The decision of the court of appeals below creates unnecessary limitations and practical difficulties in the application of an exemption that Congress was at pains to broaden and clarify. To determine whether funds are "retirement funds," the court created and applied varying tests related to the debtor's retirement status, the source of funds, the necessity for minimum distributions, and the applicability of tax penalties for withdrawals. By inventing these tests for determining whether funds are "retirement funds," the decision of the court of appeals opens up a Pandora's Box of litigation that destroys the efficiency created by the objective statutory presumption written by Congress.

ARGUMENT

I. CONGRESS INTENDED AND DRAFTED THE RETIREMENT FUNDS EXEMPTION TO BE STRAIGHTFORWARD AND BROAD.

In the 2005 amendments to the Bankruptcy Code, Congress enacted, among other things, a package of provisions designed to expand protection for tax-favored retirement plans. Included in these provisions is a uniform exemption, applicable to all individual debtors, for retirement funds in certain tax-exempt accounts. The exemption shields these funds and makes them unavailable to the bankruptcy trustee or creditors. The exemption has only two requirements: 1) the funds must be retirement funds, and 2) the funds must be in an account exempt from taxation under certain sections of the Internal Revenue Code. Funds transferred directly (*i.e.*, in a trustee-to-trustee transfer) from one tax-exempt account to another tax-exempt account are not disqualified from the exemption.

Here, the funds at issue fit squarely within the exemption. Ruth Heffron placed retirement funds into an Individual Retirement Account ("IRA"), one of the enumerated types of tax-exempt accounts listed in the statute. Ruth named her daughter, Heidi Heffron-Clark, as the IRA beneficiary. Upon Ruth's death, the funds in the IRA passed to Heidi, and were subsequently transferred via a trustee-to-trustee transfer into an enumerated tax-exempt account belonging to Heidi. Because the transfer did not disqualify the funds from exemption, Heidi, the transferee, properly claimed them as exempt in her chapter 7 bankruptcy case. Nothing in the Bankruptcy Code requires that the transferee account be maintained for Heidi's retirement or that

Heidi must have herself saved the funds in the account in contemplation of her retirement.

A. The Bankruptcy Estate And Exemptions.

Bankruptcy law reflects a balancing act in which Congress has established the rules for adjusting debtor-creditor relationships. The importance of this regime to the national welfare, and the delicacy of the task, are suggested by the Framers' assignment to Congress of the power to "establish . . . uniform Laws on the subject . . ." U.S. CONST., art. I, § 8, cl. 4. The two main purposes of bankruptcy are to provide a fresh start to the debtor and to facilitate the fair and orderly repayment of creditors to the extent possible. *See Burlingham v. Crouse*, 228 U.S. 459, 473 (1913). To achieve these dual goals, the Bankruptcy Code first creates a bankruptcy estate upon commencement of a case. 11 U.S.C. § 541(a). Section 541(a) defines the bankruptcy estate and contains an expansive definition of property that includes all debtors' legal or equitable interests in property whether tangible or intangible, real or personal.

Some property, however, is specifically excluded from becoming property of the estate. 11 U.S.C. § 541(b). For example, property in a trust that cannot be transferred to any other person is excluded from the bankruptcy estate. 11 U.S.C. § 541(c)(2). This Court has held that debtors' interests in pension plans subject to the Employee Retirement Income Security Act of 1974 (ERISA) are not property of the bankruptcy estate, because benefits provided under such plans may not be assigned or alienated. *Patterson v. Shumate,* 504 U.S. 753 (1992).

Other property initially considered part of the bankruptcy estate may be removed from the estate through the exemption process. *See Taylor* v. *Freeland & Kronz*, 503 U.S. 638, 642 (1992) (Bankruptcy Code "allows the debtor to prevent the distribution of certain property by claiming it as exempt"). Exemptions serve the overriding purpose of helping the debtor to obtain a fresh start by maintaining essential property. *See* H.R. REP. No. 95-595, at 117 (1977), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6078 (purpose of this scheme is to provide "adequate exemptions and other protections to ensure that bankruptcy will provide a fresh start."); *Rousey v. Jacoway*, 544 U.S. 320, 322, 325 (2005). In some states the debtor is given a choice between using either the state exemptions or the federal exemptions. Section 522(d) lists the exemptions available under the federal exemption scheme. These include among other things a certain amount of equity in the debtor's home or vehicle, household furnishings, tools of the debtor's trade, unmatured life insurance policies, and personal injury claims. 11 U.S.C. § 522(d)(1), (2), (3), (6), (8), (11)(D).

Some states, as authorized by the Code, have "opted-out" out of the federal bankruptcy exemption scheme. *See* 11 U.S.C. § 522(b)(1); *Owen* v. *Owen*, 500 U.S. 305, 308 (1991). In those states debtors must choose exemptions under state law. In addition, the Bankruptcy Code permits debtors choosing state law exemptions to exempt certain retirement funds, to exempt property held as tenants by the entireties, and to use any other federal nonbankruptcy law exemption. 11 U.S.C. § 522(b)(3)(A), (B), (C).

Exempt property is removed from the bankruptcy estate and shielded from administration by the trustee. In chapter 7, the trustee may sell prop-

erty of the estate that is not exempt and distribute the proceeds to creditors in accordance with the priorities set forth in the Bankruptcy Code. *See* 11 U.S.C. § 704(a)(1) (the trustee shall collect and reduce to money property of the estate); § 507 (setting forth priorities for distribution); § 726 (setting forth order of distribution). In chapter 13, where unsecured creditors must be paid at least as much through a debt adjustment plan as they would receive in a chapter 7, the debtor may need to pay an amount equal to the value of non-exempt property into her plan if she wants to retain that property. 11 U.S.C. § 1325(a)(4).

As the current Bankruptcy Code reflects, Congress has specifically considered and resolved a variety of issues relating to exemptions, including the nature and scope of permissible exemptions, the States' role in defining them, and the procedures for claiming and objecting to exemptions. That is, in fulfillment of its assigned Constitutional duty, Congress has already made the difficult choices regarding exemptions, balancing the economic harm that exemptions visit on creditors with the need to provide the debtor a fresh start.

B. In Protecting Retirement Savings In Bankruptcy, Congress Rejected Limitations Established Under State Law And In Prior Court Decisions.

The exemption at issue in this case was enacted as part of the 2005 amendments to Bankruptcy Code, and it applies to, "retirement funds to the extent that those funds are in a fund or account that is exempt from taxation under section 401, 403 408,

408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986." 11 U.S.C. § 522(b)(3)(C). This exemption was part of a broader package of provisions in the 2005 amendments that protected tax-qualified retirement plans. *See* 11 U.S.C. §§ 362(b)(19), 522(b)(3)(C), (b)(4), (d)(12), 523(a)(18), 1322(f). Section 362(b)(19) excepts from the automatic stay withholding from the debtor's income for repayment of loans from tax-qualified accounts. Section 522(b)(3)(C) and 522(d)(12) have identical language, which is at issue in this case, and protect retirement funds in certain tax-exempt accounts. Section 522(b)(4) establishes a presumption in favor of exemption when the retirement fund has received a favorable determination from the Internal Revenue Service, and also applies the exemption to certain transfers from one tax-exempt account to another. Section 523(a)(18) excepts from discharge retirement plan loans. Finally, section 1322(f) limits the ability of a debtor to alter the terms of a retirement plan loan in a chapter 13 plan and specifies that funds used to repay those loans are not "disposable income" for purposes of the chapter 13 projected disposable income test. 11 U.S.C. § 1325(b)(5); *see Hamilton v. Lanning*, 560 U.S. 505 (2010) (discussing the projected disposable income test in chapter 13).

All of these sections have their origins in an amendment to the Consumer Bankruptcy Reform Act of 1998, known as the "Hatch Amendment." *See* H.R. 3150, 105th Cong. (1998); 144 Cong. Rec. S10596-01 (Sept. 18, 1998) (Amendment 3600: Protection of Retirement Savings). The purpose of the amendment was straightforward and broad. According to Senator Hatch, one of the co-sponsors of the amendment, the statutory language was designed to:

"Provide a uniform exemption for all types of tax-favored qualified pension plan assets in bankruptcy including Roth IRAs whose status under current bankruptcy law is uncertain, protect retirement assets that are in the process of being rolled over into a new qualified plan, and protect loans from pension funds in bankruptcy." 144 Cong. Rec. S10508-01 (Sept. 17, 1998). Approval of the amendment was unanimous, *see id.*, and the language of the amendment carried through seven more years of congressional debate on bankruptcy reform virtually unchanged, and was finally enacted as part of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 23, § 224 (2005).

With the 2005 amendment to the Bankruptcy Code, Congress expanded the protection for tax-favored retirement plans by providing standard federal exemptions to supplement the patchwork of state law exemptions that sometimes did not suffice to exempt IRAs from a debtor's estate. *See* H.R. REP. No. 109-31(I), pt.1 at 63-64 (2005) (intent to "expand the protection for tax-favored retirement plans or arrangements that may not be already protected" under the Code, or other state or federal law.) For example, just prior to the Hatch Amendment, the Pennsylvania exemption statute allowed the debtor to exempt only $15,000 in rollover contributions from an employee benefit plan to an IRA. 42 Pa. Con. Stat. Ann. § 8124(b)(1)(ix)(1997); *In re Barshak*, 106 F.3d 501 (3d Cir. 1997) (debtor could exempt only $15,000 of $71,134 of rolled over funds). Under Colorado law, debtors were permitted to exempt 75% of the entire balance in their IRA account. *See In re Kulp*, 949 F.2d 1106, 1108 (10th Cir. 1991). A debtor in Massachusetts was able to exempt up to seven

percent of his income within five years before he filed for bankruptcy. *See In re Goldman*, 192 B.R. 1 (D. Mass. 1996). All of the varied state law protections were supplemented by the uniform federal exemption, which effectively established a floor, but not a ceiling, for retirement fund exemptions. Also abrogated by the new federal exemption were cases such as *In re Clark*, 711 F.2d 21 (3d Cir. 1983), which held that the exemption of funds in a Keogh retirement plan depended on whether the debtor at the time of the petition was receiving, or was eligible to receive, distributions (*i.e*, whether the debtor had reached the age of 59½). In creating a uniform exemption for all types of tax-qualified retirement plans, Congress included no limitations based on the debtor's age, the debtor's income, the debtor's current use of the funds, the debtor's contemplated use of the funds, or the debtor's actual use of the funds. But, where Congress did desire a limitation, it imposed one expressly. Thus, the protection granted in bankruptcy to any individual debtor's IRAs has an aggregate cap of $1,245,475. 11 U.S.C. § 522(n) (originally $1 million, the amount is adjusted every three years for inflation). This amount can be increased if the interest of justice so require. *Id.*

C. The Plain Language Of The Retirement Funds Exemption Is Entirely Consistent With Congress's Intent To Establish A Uniform Exemption For All Types Of Tax-Favored Retirement Plan Assets.

"'[W]hen the statute's language is plain, the sole function of the courts—at least where the disposition required by the test is not absurd—is to en-

force it according to its terms.'" *Lamie v. United States Trustee*, 540 U.S. 526, 534 (2004), *quoting Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1, 6 (2000). The text of the statute here is not only plain and dispositive, it is also consistent with Congress's intent to create a uniform exemption for all types of tax-exempt retirement plans. Section 522(b)(3)(C) exempts "retirement funds to the extent that those funds are in a fund or account that is exempt from taxation under section 401, 403 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986." As the Fifth Circuit Court of Appeals in *In re Chilton*, 674 F.3d 486 (5th Cir. 2012), correctly recognized when construing the parallel requirements of section 522(d)(12), the statute imposes only two requirements before a debtor may claim the exemption: "(1) the amount the debtor seeks to exempt must be retirement funds; and (2) the retirement funds must be in an account that is exempt from taxation under one of the provisions of the Internal Revenue Code set forth therein." *Id.* at 488, *citing In re Nessa*, 426 B.R. 312, 314 (B.A.P. 8th Cir. 2010). In *Chilton*, the court recognized that the debtor's inherited IRA satisfied both statutory conditions. 674 F.3d at 489-90. The funds were retirement funds in a tax-exempt account and those funds were transferred directly to another tax-exempt account. That ended the matter, as it should here.

There is no dispute that the funds in question in this case were in one of the specified accounts while Ruth Heffron, Heidi Heffron-Clark's mother, was alive. Nor is there any legitimate dispute that the funds were transferred, by means of a lawful and appropriate trustee-to-trustee transaction, into one of those specified accounts after the IRA passed to Heidi as the result of her mother's death. *See* 26

U.S.C. § 408(d)(3) (inherited IRA may be transferred via a direct trustee-to-trustee transfer without tax consequences). The transfer did not affect their exempt status under the Bankruptcy Code. 11 U.S.C. § 522(b)(4)(C). Moreover, the funds at issue remained in that tax-qualified transferee account as of the date of the filing of the petition.

Furthermore, there is no dispute that the money contained in the transferee account constituted "retirement funds" when that money was originally deposited into the IRA. The court of appeals, however, denied Heidi's exemption because it decided that the money contained in the transferee account did not constitute *Heidi's* "retirement funds." That is, according to the court of appeals, the retirement funds in the IRA of Ruth Heffron, debtor's mother, ceased to be anyone's "retirement funds" upon her death. *In re Clark,* 714 F.3d 559, 561 (7th Cir. 2013).

The court of appeals' view is inconsistent with the plain language of the statute. Nothing in the transfer provision, 11 U.S.C. § 522(b)(4)(C), requires that the account into which the funds are transferred be one established or maintained for the debtor's retirement, or that the funds in that account necessarily have been saved by the debtor in contemplation of her retirement. All that the statute requires is that the transferee account be one that is "exempt from taxation under" certain Internal Revenue Code provisions. Heidi's account, into which her late mother's retirement funds were transferred, is in fact tax exempt under these provisions of tax law. In this case, the transferee account is tax exempt under 26 U.S.C. § 408(e)(1), which expressly provides that "[a]ny individual retirement account is exempt from taxation..." *See Chilton*, 674 F.3d at

489. Funds held in a transferee account do not lose their original status as "retirement funds" under federal law due to the transfer from one tax-exempt account to another.

II. THE COURT OF APPEALS' DECISION BELOW INJECTS UNCERTAINTY INTO THE SCOPE OF THE RETIREMENT FUNDS EXEMPTION AND OPENS THE DOOR TO A HOST OF PRACTICAL PROBLEMS.

In reaching its decision, the court of appeals below used several litmus tests for determining whether funds were "retirement funds." The first test relates to the source of the funds and the reason the funds were set aside. The second test considers restrictions on withdrawals. The third test looks at limitations on distributions. Each test was applied by the court of appeals to a single factual scenario that produced a result consistent with the court's ultimate holding. That holding carves out an exception, for non-spouse, inherited IRAs, to the broad exemption language Congress enacted.

The court of appeals stated that an IRA "by which a person provides for his or her own retirement" meets the "retirement fund" requirement. *Clark*, 714 F.3d at 560. That is, if the debtor is the source of the funds set aside and the reason for setting aside the funds is to provide for the debtor's retirement then the funds are "retirement funds." However, applying this source and reason test to an IRA inherited by a spouse would result in funds that are not exempt because the surviving spouse was not necessarily the source of the funds and the funds were not set aside to support the surviving spouse's retirement. Therefore, the court of appeals applied a

different test to this factual scenario, stating that the money remains "retirement funds" because the surviving spouse cannot withdraw any of the money before age 59½ without paying a penalty tax. *See id.* For all other inherited IRAs, the court of appeals held that the determinative question was whether money could be held in the account until the current owner retires, and concluded that non-spouse inherited IRAs are "not savings reserved for use after their owners stop working." *Clark*, 714 F.3d at 562. From a practical perspective, it is impossible to know which test to apply in other factual scenarios. This can be illustrated with a few examples.

• Debtor is 62 years old and retired when his 85-year old father's IRA passes to him on account of his father's death. There is no question that the funds in the inherited IRA will be used to support the debtor in retirement since he has already stopped working. Under the court of appeals' first test—the source/purpose test—the funds would not be exempt because though used by the debtor for retirement, the debtor was not the source of the funds. However, under the court of appeals' third test—whether funds could be held in the account until the current owner retires—the inherited IRA would be exempt.

• Debtor is 45 years old and has inherited an IRA from her mother. Every year she takes the minimum distribution required by the Tax Code based on her projected life expectancy. *See* IRS Single Life Expectancy Table, IRS Publication 590, at 94. She files for bankruptcy at age 50. Based on her minimum required distribution, a significant amount would still be in the account when she plans to retire at age 70, perhaps more than was in the account initially. Since she plans to use as much of the account

as possible to support her retirement, the court of appeals interpretation leaves entirely unclear whether she can exempt all the funds, a portion of the funds equivalent to what she expects to use in retirement, or none of the funds.

• Debtor is 58 years old and searching for employment, or in the alternative contemplating retirement. Three years ago her spouse died. As the beneficiary of her deceased spouse's IRA, she elected to transfer the funds into an inherited IRA (beneficiary) account instead of her own IRA account. As a result, she is able to take distributions without penalty. *See* 26 U.S.C. § 72(t)(2)(A)(ii). Because there is no penalty, does her inherited IRA account now become nonexempt under the court of appeals' decision?

• Debtor is 71 years old and employed. The debtor is required to take minimum distributions from his IRA account, as would be the case with most other types of tax-favored retirement accounts. The court of appeals' decision suggests that the debtor's retirement funds would not be exempt because, like Heidi Heffron-Clark, the debtor must take minimum distributions, which are used for current consumption.

• Debtors filed a chapter 13 case and exempted their retirement funds in IRA accounts. During their five-year plan, debtors experienced medical problems for which they had to pay $4,500 out-of-pocket for medical expenses. Debtors take a penalty-free distribution from their IRA to pay for these medical expenses. *See* 26 U.S.C 72(t)(2)(B). Because the funds were not actually used for retirement purposes, the court of appeals' formula creates uncertainty as to whether the chapter 13 trustee would be

able to seek a modification of the debtors' chapter 13 plan claiming that the $4,500 is a non-exempt asset or is income.

Affirmance of the court of appeals decision would unnecessarily open a Pandora's Box of litigation around the term "retirement funds." Under the decision of the court of appeals whether funds constitute "retirement funds" depends on a host of factors including the debtor's age, retirement status (retired or not), minimum distribution requirements, the applicability of tax penalties, and whether the funds are actually used for retirement purposes. Congress enacted the retirement funds exemption specifically to eliminate this same panoply of questions and limitations that existed under state law and prior court decisions. Furthermore, the efficiency created by the presumption that retirement funds are exempt if the fund has received a favorable determination from the Internal Revenue Service would be lost. 11 U.S.C. § 522(b)(4)(C). At bottom, the reasoning used by the court of appeals is unworkable in practice and stands in stark contrast to the simplicity of the exemption, as written by Congress, and as recognized by the appellate courts in other circuits. It creates uncertainty in the application of a statute that has plain meaning.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted,

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AMICUS CURIAE BRIEF

RECORD
AND
BRIEFS

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In the Supreme Court of the United States

BRANDON C. CLARK AND HEIDI K. HEFFRON-CLARK,
PETITIONERS

v.

WILLIAM J. RAMEKER, TRUSTEE, ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

BRIEF FOR THE TRIBUNE COMPANY 401(K) SAVINGS PLAN, THE TRIBUNE COMPANY DEFINED CONTRIBUTION RETIREMENT PLAN, THE TRIBUNE COMPANY MASTER RETIREMENT SAVINGS TRUST, AND THE TIMES MIRROR SAVINGS PLUS PLAN AS AMICI CURIAE IN SUPPORT OF PETITIONERS

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In the Supreme Court of the United States

No. 13-299

BRANDON C. CLARK AND HEIDI K. HEFFRON-CLARK, PETITIONERS

v.

WILLIAM J. RAMEKER, TRUSTEE, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE TRIBUNE COMPANY 401(K) SAVINGS PLAN, THE TRIBUNE COMPANY DEFINED CONTRIBUTION RETIREMENT PLAN, THE TRIBUNE COMPANY MASTER RETIREMENT SAVINGS TRUST, AND THE TIMES MIRROR SAVINGS PLUS PLAN AS AMICI CURIAE IN SUPPORT OF PETITIONERS

INTEREST OF AMICI CURIAE[1]

Amici curiae The Tribune Company 401(k) Savings Plan, The Tribune Company Defined Contribution Retirement Plan, The Tribune Company Master Retire-

[1] Petitioners have consented to the filing of amicus curiae briefs in support of either party or of neither party, in a letter on file with the Clerk. Counsel for Respondents consented to the filing of this brief pursuant to Rule 37.3(a). No counsel for any party authored this brief in whole or in part, and no person or entity, other than amici curiae or their counsel, made a monetary contribution intended to fund the preparation or submission of this brief.

ment Savings Trust, and The Times Mirror Savings Plus Plan (collectively, the Tribune 401(k) Plans or Plans) are individual account retirement plans sponsored by The Tribune Company that were established pursuant to the Employee Retirement Income Security Act (ERISA), 29 U.S.C. 1001 *et seq.* The Plans' current net assets are approximately $1.6 billion.

The Tribune Company (Tribune) is one of the largest broadcasting and newspaper companies in the United States. In 2007, Tribune filed for Chapter 11 relief under the Bankruptcy Code, and successfully restructured its business and financial affairs. This restructuring saved thousands of jobs, but also required certain reductions in force and other actions that entailed financial hardship for current and former employees of Tribune. The vast majority of those employees saved for their retirement by participating in the Tribune 401(k) Plans.

Such scenarios are routine in bankruptcies, whether they involve large corporations like Tribune, medium-sized companies like the Coleman Furniture Corporation involved in *Patterson* v. *Shumate*, 504 U.S. 753 (1992), or small businesses like the pizza parlor owned and operated by the Clarks in the case at bar. And the frequent result is that bankruptcy trustees and creditors seek recourse against the retirement savings of those same current and former employees who have already suffered financial hardship.

Frequently, an individual's retirement savings are held in multiple accounts, often of different types. An individual may be the beneficiary of a defined benefit plan or an employer-funded individual account retire-

ment plan; may have contributed a portion of her own wages to an employer-sponsored individual account retirement plan, such as a 401(k) plan; and/or may have contributed to an individual retirement account (IRA). In the modern economy where individuals have multiple jobs during their careers, current Tribune employees likely have so-called rollover IRAs that hold retirement funds accumulated during prior employment. Many of the former Tribune employees who lost jobs in the restructuring will have created IRAs to hold their retirement funds that used to be in the Tribune 401(k) Plans. After a bankruptcy, creditors often attempt to recover from such retirement accounts. The Tribune 401(k) Plans themselves have been sued for hundreds of millions of dollars by creditors seeking recourse against those employees' retirement savings based on claims arising from the Tribune bankruptcy. See *In re Tribune Co. Fraudulent Conveyance Litig.*, No. 11 MD 2296, No. 12 MC 2296 (S.D.N.Y.) (Sullivan, J.).

The case at bar concerns the intersection of two statutory schemes—namely, attempted creditor recourse under the Bankruptcy Code that threatens to undermine Congress's attempt, through ERISA and other statutes, to promote and protect retirement savings. Although this case involves relatively modest sums, it could have substantial implications for the Tribune 401(k) Plans, other employee benefit plans governed by ERISA, and plan participants in suits where hundreds of millions of dollars are at stake. The Court's decision could also have potentially significant effects on existing and future IRA usage by taxpayers, including current and former employees of Tribune.

Congress has made clear its intent to protect tax-qualified employee retirement plans from creditors in order to incentivize American workers to save for their retirements. When Congress has legislated to protect retirement assets—whether the particular provision appears in the Bankruptcy Code, the Internal Revenue Code, or ERISA—the courts should construe the law to effectuate that intent.

SUMMARY OF THE ARGUMENT

Ensuring that Americans are financially prepared for retirement with a decreasing dependency on government-funded benefits has been and continues to be at the forefront of legislative initiatives. Over the past several decades, Congress has enacted comprehensive legislation to incentivize and protect retirement savings through ERISA, the Internal Revenue Code, and the Bankruptcy Code.

In *Patterson* v. *Shumate*, 504 U.S. 753 (1992), this Court recognized ERISA's strong protection of employer-sponsored retirement plans, such as 401(k)s, from creditors. However, much has changed in America's retirement landscape since that time. With the American workforce becoming more transient, retirement funds in 401(k)s are increasingly rolled over into individual retirement accounts (IRAs), which now account for more than 25% of all retirement assets in the United States. As a result of this shift, and given the uncertainties surrounding Social Security, IRAs became increasingly critical components of Americans' retirement portfolios. But IRAs are not governed by ERISA, and they did not initially enjoy ERISA's bankruptcy protections.

In 2005, Congress addressed the disparate treatment in bankruptcy of ERISA plans and non-ERISA plans, such as IRAs. Recognizing the absence of protection for non-ERISA retirement plans, Congress amended Section 522 of the Bankruptcy Code to exempt from a debtor's bankruptcy estate all "retirement funds" to the extent such funds are exempt from taxation under certain provisions of the Internal Revenue Code. In so doing, Congress extended the same protections afforded under ERISA to non-ERISA retirement plans.

With each action Congress has taken regarding retirement assets, it has demonstrated its intent to broadly protect and incentivize retirement savings. Consistent with Congress's clear purposes, these statutes must be construed in favor of protecting retirement benefits.

The court of appeals' ruling runs directly to the contrary. Narrowly construing Section 522 of the Bankruptcy Code, the court of appeals substituted its own policy judgment for that of Congress and determined that IRAs inherited by non-spouses should not be afforded protection from creditors. The court of appeals thus oversimplified an extraordinarily complex and multifaceted legislative scheme, departed from the plain text of the Bankruptcy Code, and ignored Congressional policy, as reflected in numerous statutes.

ARGUMENT

I. TAX-QUALIFIED RETIREMENT PLANS PLAY A CRITICAL ROLE IN THE UNITED STATES ECONOMY

IRAs play an ever increasing role in providing economic security to Americans in their retirement. The United States retirement system is based on three pillars: Social Security, employment-based plans (including defined benefit pension plans and defined contribution plans, such as 401(k)s), and personal savings (including IRAs). Two-thirds of Americans have tax-qualified retirement plans of some kind. See Sarah Holden & Daniel Schrass, *The Role of IRAs in U.S. Households' Saving for Retirement*, 2013, 19 ICI Research Perspective No. 11, at 3 (Nov. 2013) (Holden & Schrass). And, with the decline in defined benefit pension plans and decreasing reliance on Social Security for retirement, participation in IRAs has risen sharply in the last two decades. Almost 50 million Americans now hold approximately $5.7 trillion in IRAs, which amounts to 9% of all Americans' household assets and more than 25% of all retirement savings. *Id.* at 2-3. These figures represent a doubling over the past two decades. *Id.*

Inherited IRAs of the type at issue in this case are an increasingly common feature of the American retirement system. With the bulk of IRA assets being held by Americans over the age of 55, this phenomenon will only increase in the coming years. See Holden & Schrass 5, 22. Congress has encouraged the growth in IRAs by creating the ability to roll over from ERISA-qualified plans into IRAs when participants change

employers and from IRAs to ERISA-qualified plans. 26 U.S.C. 408(d)(3); Holden & Schrass 1. With job transiency on the rise, rollovers have become increasingly common. See James M. Poterba et al., *The Rise of the 401(k) Plan, Lifetime Earnings, and Wealth at Retirement*, *in* Research Findings in the Economics of Aging 271, 274 (David A. Wise ed., 2010).

Protecting and incentivizing individual retirement savings is a critical public policy goal. While employer-sponsored retirement plans play a major role in the U.S. economy, there remains a serious shortfall in Americans' retirement savings. The National Retirement Risk Index estimates that more than 50% of today's working households are at risk of not being able to maintain their standard of living upon retirement. Alicia H. Munnell et al., *The National Retirement Risk Index: An Update* 1 (Oct. 2012), http://crr.bc.edu/wp-content/uploads/2012/11/IB_12-20-508.pdf. The recent recession and aging population, among other factors, have exacerbated this growing problem. See *Retirement Security After the Great Recession: Middle-Income and Middle-Aged Americans Feeling the Squeeze*, Report by The U.S. Congress Joint Economic Committee Chairman's Staff 2-3 (Dec. 21, 2012), http://www.jec.senate.gov/public/index.cfm?a=Files.Serve&File_id=4bc4e022-4bc8-476c-a91a-268852d8ff0e.

As this Court has recognized, Congress's goal in this area is "one of ensuring that 'if a worker has been promised a defined pension benefit upon retirement—and if he has fulfilled whatever conditions are required to obtain a vested benefit—he actually will receive it.'" *Patterson* v. *Shumate*, 504 U.S. 753, 764-765 (1992) (quoting *Nachman Corp.* v. *PBGC*, 446 U.S. 359, 375

(1980)). The need to protect this goal is, if anything, strongest in the context of individual account retirement plans, such as IRAs and 401(k) plans, where the employee has been induced by congressional tax policy to place her own wages into a fund intended to provide for the individual (and her dependents) in her retirement years.

II. Congress Has, Over Several Decades, Enacted Numerous Pieces Of Legislation Designed To Protect Retirement Savings

Congress has enacted a variety of incentives designed to encourage retirement savings and to avoid—or at least minimize—the potential economic and social consequences of a national retirement income deficit. With each piece of legislation, Congress has demonstrated its intent to broadly protect and provide incentives for retirement savings. Statutory interpretation should further this important congressional goal by construing these statutes in favor of protecting retirement benefits.

In 1974, Congress enacted ERISA to establish standards for employer-sponsored retirement plans. H.R. Rep. No. 533, 93d Cong., 2d Sess. (1973). Under ERISA, Congress set forth a "comprehensive and reticulated" web of broad protections of employee-sponsored retirement programs. *Nachman Corp.* v. *PBGC*, 446 U.S. 359, 361 (1980); see, *e.g.*, 29 U.S.C. 1056(d) (anti-alienation clause protecting ERISA benefits from the reach of creditors), 1102-1104 (establishing standards of conduct for plan fiduciaries), 1132 (providing for appropriate remedies and access to federal courts).

In order to incentivize retirement savings, ERISA amended the Internal Revenue Code to provide tax preferences to many retirement assets, including, *inter alia*, employer-sponsored retirement plans such as 401(k) plans, employee annuity plans, and deferred compensation plans offered by state and local governments. See, *e.g.*, 26 U.S.C. 401(k), 403(b), 457(b).[2] Of most relevance here, Sections 408 and 408A of the Internal Revenue Code exempt from taxation individual retirement accounts, including inherited IRAs. See 26 U.S.C. 408(e), 408A(a). Congress also provided that the favorable tax treatment set forth in Section 401 of the Internal Revenue Code applies only to employer-based retirement plans that contain anti-alienation provisions. See 26 U.S.C. 401(a)(13).

Congress also included in the Bankruptcy Code protections for retirement benefits. Social Security benefits, for example, are exempted from the bankruptcy estate. Notably, the social security exemption includes not only workers' own retirement benefits, but also disability benefits and survivorship benefits for dependents that are provided through the social securi-

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[2] The IRS frequently raises the contribution limits for IRAs, 401(k) plans, and other retirement accounts, thereby allowing Americans to save increasing amounts and, thus, to maximize their retirement security. See IRS, *In 2014, Various Tax Benefits Increase Due to Inflation Adjustments*, IR-2013-87 (Oct. 31, 2013), http://www.irs. gov/uac/Newsroom/In-2014,-Various-Tax-Benefits-Increase-Due-to-Inflation-Adjustments; see also IRS, *IRS Announces 2014 Pension Plan Limitations; Taxpayers May Contribute up to $17,500 to their 401(k) plans in 2014*, IR-2013-86 (Oct. 31, 2013), http://www.irs.gov/uac/IRS-Announces-2014-Pension-Plan-Limitations;-Taxpayers-May-contribute-up-to-$17,500-to-their-401(k)-plans-in-2014.

ty program. 11 U.S.C. 522(d)(10)(A); see also 42 U.S.C. 407(a). Likewise, Congress has exempted from the bankruptcy estate other, non-governmental, benefit programs designed to provide retirement income, such as pensions and annuities. 11 U.S.C. 522(d)(10)(E); see *Patterson* v. *Shumate*, 504 U.S. 753, 760 (1992).

In 2005, Congress amended Section 522 of the Bankruptcy Code to extend the bankruptcy protections previously recognized for employer-sponsored retirement plans to other tax-qualified retirement plans as well. Although Section 522 generally requires for all other types of exemptions that debtors choose between a state or federal list of exempt assets, Congress specifically provided that all individual debtors may claim exemption for retirement assets, even if they elect the state list for all other purposes. 11 U.S.C. 522(b)(2), (b)(3)(C), (d)(12).

The broad protections of retirement savings from creditors, including permitting the passing of IRA and 401(k) funds to spouses, children, and other beneficiaries to provide for their continuing welfare and protection from *their* creditors, is of a piece with Congress's repeated enactments designed to provide incentives—and eliminate disincentives—to saving in retirement accounts. See pp. 15-18, *infra*. Congress has repeatedly demonstrated its policy of preventing ancillary concerns from inhibiting participation in these restricted-use, tax-exempt retirement savings vehicles. For example, concerned that some individuals might avoid placing money into an IRA or 401(k) for fear that it would be unavailable in the event of unexpected healthcare costs, Congress permitted withdrawals without penalty for that purpose. See 26 U.S.C.

72(t)(2)(B). In similar fashion, Congress has permitted employees to access IRAs to fund college for children. See 26 U.S.C. 72(t)(2)(E). So too did Congress eliminate worries about the ability to access retirement savings in order to buy a home. See 26 U.S.C. 72(t)(2)(F). These permitted uses are not for retirement, and indeed are uses for family members and dependents, but Congress has permitted such uses of retirement assets in order to give employees comfort to take advantage of tax-preferred retirement vehicles. See *Rousey* v. *Jacoway*, 544 U.S. 320, 332 (2005) ("[T]he Internal Revenue Code permits penalty-free early withdrawals in certain limited circumstances, [but] these exceptions do not reduce IRAs to savings accounts."). And, of course, by encouraging retirement savings and protecting those savings against creditor recourse, Congress lessened the prospective burdens on government to provide benefits to prevent destitution, whether among the elderly, the dependents of retirees, or dependents of those who died early before they could make sufficient provisions.

Congress consistently "assure[s] American workers that they may look forward with anticipation to a retirement with financial security and dignity, and without fear that this period of life will be lacking in the necessities to sustain them as human beings within our society." S. Rep. No. 127, 93d Cong., 2d Sess. 13 (1973). These statutory provisions manifest a clear congressional intent to incentivize retirement savings and then to broadly protect and preserve retirement assets. Such protections take away excuses that individuals might otherwise use not to save for retirement. They ensure that individuals making such savings can use

them in their own retirement as well as to protect their dependents.

Simply put, "there can be no doubt that Congress has expressed a deep and continuing interest in the preservation of pension plans, and in encouraging retirement savings." *Velis* v. *Kardanis*, 949 F.2d 78, 82 (3d Cir. 1991). There has been "'a considered congressional policy choice, a decision to safeguard a stream of income for pensioners (and their dependents, who may be, and perhaps usually are, blameless), even if that decision prevents others from securing relief for the wrongs done them.'" *Patterson*, 504 U.S. at 765 (quoting *Guidry* v. *Sheet Metal Workers Nat'l Pension Fund*, 493 U.S. 365, 376 (1990)). "If exceptions to this policy are to be made, it is for Congress to undertake that task." *Ibid.*

III. Courts, Including This Court, Have Given Full Effect To Congress's Purpose Of Protecting Retirement Assets

When Congress has acted to provide incentives and protections for retirement benefits—whether under ERISA, the Internal Revenue Code, or the Bankruptcy Code—courts have given full effect to those provisions to effectuate Congress's purpose. The question whether to construe these protections broadly or narrowly most commonly arises in the ERISA retirement plan context, which is the statutory scheme most closely related to the laws governing IRAs. "[Congress] intended that coverage under [ERISA] be construed liberally to provide the maximum degree of protection to working men and women covered by private retirement

programs." S. Rep. No. 127, 93d Cong., 2d Sess. 18 (1973).

Courts have heeded this guidance, interpreting a number of ERISA's provisions expansively in order to promote uniformity and to effectuate Congress's intent. See, *e.g.*, *Egelhoff* v. *Egelhoff*, 532 U.S. 141, 152 (2001); see also *Aetna Health Inc.* v. *Davila*, 542 U.S. 200, 208 (2004) (holding that in order to provide a "uniform regulatory regime" ERISA's preemption provision must be given expansive reading); *In re Citigroup ERISA Litig.*, 662 F.3d 128, 151-152 (2d Cir. 2011), cert denied, 133 S. Ct. 475 (2012) (stating that ERISA should be "liberally construed in favor of protecting the participants in employee benefit plans" (internal quotation marks omitted)); *Grindstaff* v. *Green*, 133 F.3d 416, 432 (6th Cir. 1998) (broadly construing the term "asset" in ERISA).

When Congress has constructed a comprehensive statutory scheme, as it has in the interconnected statutes that protect and provide incentives for retirement savings (whether ERISA plans or IRAs), other statutes should not be construed to frustrate its purpose. See, *e.g.*, *PhotoMedex, Inc.* v. *Irwin*, 601 F.3d 919, 923-930 (9th Cir. 2010) (holding, in light of *Buckman Co.* v. *Plaintiffs' Legal Commission*, 531 U.S. 341, 347-351 (2001), that the Lanham Act cannot be used to usurp the authority of the Food and Drug Administration under FDCA); *Sandoz Pharm. Corp.* v. *Richardson-Vicks, Inc.*, 902 F.2d 222, 230-232 (3d Cir. 1990) (same); see also *Sybersound Records, Inc.* v. *UAV Corp.*, 517 F.3d 1137 (9th Cir. 2008) (holding similarly that Lanham Act may not be used to circumvent Copyright Act's standing requirement).

At the intersection of bankruptcy and laws that encourage retirement savings (including ERISA), this Court has recognized the vital importance of protecting retirement assets. In *Patterson* v. *Shumate*, 504 U.S. 753, 759-760 (1992), the Court held that Section 541(c)(2) of the Bankruptcy Code, which excludes from a debtor's estate property that is subject to a restriction on transfer enforceable under "applicable nonbankruptcy law," encompasses federal laws such as ERISA that prohibit assignment or alienation of pension benefits. In so holding, this Court emphasized that the Bankruptcy Code's broad inclusion of assets in the bankruptcy estate is not itself a policy goal, but merely an interpretive convention. *Id.* at 763-764 ("[W]e think that petitioner mistakes an admittedly broad definition of includable property for a 'policy' underlying the Code as a whole."). And, therefore, the clear legislative policy to protect retirement savings from creditors was given greater weight. *Ibid.*

This Court has prioritized giving "full and appropriate effect" to the policy embodied in ERISA to protect retirement benefits in order to "safeguard a stream of income for pensioners [] and their dependents." *Patterson*, 504 U.S. at 763-764. In *Patterson* the Court emphasized that retirement benefits must be protected in bankruptcy proceedings regardless of the beneficiary's own bankruptcy status. *Ibid.* To hold otherwise, the Court observed, could encourage "creditors [to] engage in strategic manipulation of the bankruptcy laws in order to gain access to otherwise inaccessible funds." *Id.* at 764.

The same statutory analysis prevails with respect to IRAs. The legislative history of the 2005 amend-

ment confirms that purpose: "The intent of [the amendment to Section 522] is to expand the protection for tax-favored retirement plans *or arrangements* that may not be already protected . . . ." H.R. Rep. No. 31, 109th Cong., 1st Sess., pt. I 63-64 (2005) (emphasis added). Courts should give full effect to Congress's policy choice. The court of appeals, by contrast, construed Section 522 of the Bankruptcy Code in a manner that undermines those important statutory protections, without any basis for doing so.[3]

IV. CONSTRUING SECTION 522 TO PERMIT CREDITOR RECOURSE AGAINST NON-SPOUSAL INHERITED RETIREMENT ASSETS UNDERMINES THIS VITALLY IMPORTANT CONGRESSIONAL GOAL

A. Minimum Distribution Rules Manifest Congress's Intent to Continue to Protect Inherited IRAs Until Distribution

Congress did not treat inherited IRAs as mere savings accounts immediately available to beneficiaries upon the owner's death, but rather as retirement income that may be distributed in fixed amounts to the beneficiary over an individual's lifetime or expected lifetime, just as a spendthrift trust might. Congress's retirement policy is effectuated through a specific legislative scheme governing distributions from retirement

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[3] It is noteworthy that no court, including the court of appeals in this case, has challenged the reasoning behind Congress's decision to protect inherited IRAs from creditors. See Pet. App. 6a (concluding that it was "true enough" that, "if parents know that anything in their IRAs could be passed to their relatives free of creditors' claims, they would save more and draw less from IRAs during retirement").

funds, including inherited IRAs. See, *e.g.*, 26 U.S.C. 401(a)(9). Through these provisions Congress extended to the owner's beneficiaries the tax advantages and protections afforded IRAs, at least in part.

The inherited IRA can remain in tax-exempt, retirement-security-maximizing mode of operation to facilitate either continuing support of dependents for whom the original IRA owner had been providing during her lifetime, or a survivorship benefit during the expected life of the beneficiary. In general, special rules apply if the designated beneficiary is the owner's surviving spouse. See 26 U.S.C. 401(a)(9)(B)(iv). If she is the sole beneficiary, a spouse may elect to treat an inherited IRA as her own and either roll it over into another IRA or receive the distributions as if she were the owner. 26 C.F.R. 1.408-8. In non-spousal beneficiary circumstances, IRA distribution rules depend on whether the original IRA owner dies before or after the "required beginning date" for the owner to start taking IRA distributions, which is, in essence, during the year after the employee turns 70½, or at a later retirement date if the employee continues to work. 26 U.S.C. 401(a)(9)(C).[4] If the IRA owner dies after this required beginning date, the remaining balance of the IRA must be distributed over the longer of (1) the remaining life expectancy of the designated beneficiary[5]

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[4] IRA distributions are governed by provisions of Section 401(a)(9) and associated regulations. 26 U.S.C. 408(a)(6) (applying 401(k) distribution rules and regulations to IRAs). As a technical matter, the distributions must begin by April 1 of the year after the year in which the owner reaches age 70½.

[5] Separate rules apply if the owner of the IRA does not designate a beneficiary. For IRAs inherited after the required begin-

and (2) the remaining life expectancy of the owner. 26 U.S.C. 401(a)(9)(A)(ii), (B)(i), (C); 26 C.F.R. 1.401(a)(9)-5, at A-5(a)(1).

For IRAs inherited "early" (before the typical date by which IRA distributions must start), the distribution rules facilitate a survivorship benefit for up to the remaining life expectancy of the designated beneficiary. A non-spouse beneficiary receives distributions over a period not extending beyond the life expectancy of such beneficiary, commencing within one year of the owner's death. 26 U.S.C. 401(a)(9)(B)(iii); 26 C.F.R. 1.401(a)(9)-3, at A-4; 26 C.F.R. 1.401(a)(9)-9.

The Bankruptcy Code provisions at issue in this case explicitly refer to the Internal Revenue Code provisions governing IRAs, 401(k)s, and other qualified retirement accounts. In so doing, Congress incorporated by reference these parameters of when and how inherited IRAs and other retirement accounts are distributed. Congress did not require inherited IRAs to be distributed upon the death of the owner, thus avoid-

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ning date, the balance will be distributed over the life expectancy of the owner. 26 C.F.R. 1.401(a)(9)-5, at A-5(a)(2). For IRAs inherited before the "required beginning date," the five-year rule is applicable. 26 C.F.R. 1.401(a)(9)-3, at A-4. This method requires that the balance of the IRA be distributed to the beneficiary within five years of the owner's death. 26 U.S.C. 401(a)(9)(B)(ii); 26 C.F.R. 1.408-8.

Contrary to what the court of appeals implied, distributions are made over a five-year period only if the owner of the account failed to designate a beneficiary. Compare Pet. App. 2a ("Payout must be completed in as little as five years (though the time can be longer for some accounts)."), with 26 U.S.C. 401(a)(9)(B)(ii); 26 C.F.R. 1.401(a)(9)-3, at A-4.

ing exposing the money to taxes and creditors immediately. And there is no contrary language or intent reflected in Bankruptcy Code Section 522.

B. The Court of Appeals' Narrowing Construction of Section 522 Creates an Artificial Distinction Between Non-Spousal Inherited 401(k) Accounts and IRAs

If followed, the court of appeals' construction of the term "retirement funds" would create an extraordinary anomaly in the protection of Americans' retirement assets depending solely on whether an employee changes employers over the course of her lifetime. For example, if an employee remains with only one employer for her career and saves for retirement using a 401(k) plan, upon the employee's death, the assets in the 401(k) account would be unavailable to the creditors of any non-spousal named beneficiary because the assets remain in the 401(k). 11 U.S.C. 541(c)(2); *Patterson* v. *Shumate*, 504 U.S. 753, 760-764 (1992) (protecting all 401(k) assets based on 29 U.S.C. 1056(d)). If, however, the employee changed employers over the course of her working years and rolled over her 401(k) into an IRA, the court of appeals' construction of "retirement funds" to exclude inherited IRAs would expose the exact same funds to the beneficiary's creditors. Section 522 should not be construed in a fashion that narrows protection to create this anomalous result. See, *e.g.*, *Mertens* v. *Hewitt Assocs.*, 508 U.S. 248, 267 (1993) (construing ERISA to avoid providing plan participants with less protection than they had prior to the passage of ERISA).

Indeed, this interpretation would be directly contrary to Congress's repeated steps to protect tax-qualified retirement funds, including IRAs, from creditors in bankruptcy. In amending Section 522 of the Bankruptcy Code in 2005, Congress extended protection for retirement accounts to those not previously protected under ERISA's anti-alienation protections as interpreted by this Court in *Patterson*: "The intent of [the amendment to Section 522] is to expand the protection for tax-favored retirement plans or arrangements that may not be already protected under Bankruptcy Code section 541(c)(2) pursuant to *Patterson v. Shumate*, or other state or Federal law." H.R. Rep. No. 31, 109th Cong., 1st Sess., pt. I 63-64 (2005); see also *Patterson*, 504 U.S. at 760 (concluding that ERISA governed plans are excluded from a debtor's bankruptcy estate pursuant to ERISA and Section 541(c)(2) of the bankruptcy code).

In other words: (i) inherited 401(k)s are protected from creditors by ERISA's anti-alienation provision; (ii) IRAs are not subject to ERISA and, pre-2005, IRAs were vulnerable to creditors; and (iii) Congress sought to eliminate that disparity in the 2005 amendment. The court of appeals' decision once again creates an unwarranted distinction in how the two classes of retirement assets are treated, despite Congress's clear purpose to eliminate that discrepancy. By giving a narrowing construction to Section 522, the court of appeals directly contradicted the unambiguous congressional intent of protecting both ERISA and non-ERISA retirement plans, and doing so equally.

Moreover, the court of appeals' construction would create administrative costs and inefficiencies for em-

ployees and plan administrators alike. If the only way for departing employees to continue to protect retirement assets from creditors of their dependents who are to be plan beneficiaries after the death of the owner were to leave those funds in ERISA-qualified plans, then it would become increasingly common for employees to hold legacy balances in multiple plans. Such disparate treatment would force employees into an inefficient, difficult-to-manage investment structure, requiring additional effort to appropriately diversify investments across several plans. Separately, it would also impose additional burdens on plan administrators by leaving an increasing number of former employees' investments in retirement plans. By motivating employees to keep their assets in separate retirement plans, the court of appeals' approach undermines Congress's decision to minimize such inefficiencies by facilitating IRA rollovers—a decision Congress has consistently reaffirmed. See American Taxpayer Relief Act of 2012, Pub. L. No. 112-240, § 902, 126 Stat. 2313, 2371; Small Business Jobs Act of 2010, Pub. L. No. 111-240, § 2112, 124 Stat. 2504, 2566; Pension Protection Act of 2006, Pub. L. No. 109-280, §§ 822-829, 120 Stat. 780, 997-1002; Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. No. 107-16, §§ 641-643, 115 Stat. 38, 118-123; *Rousey* v. *Jacoway*, 544 U.S. 320, 323 (2005) ("The Internal Revenue Code encourages such rollovers by making them nontaxable.").

C. A Distinction Between Spousal and Non-Spousal Beneficiaries Would Have Far-Reaching, Unintended Consequences

An interpretation of the statute that would protect spousal inherited IRAs from creditors in bankruptcy,

but not protect "non-spousal" inherited IRAs, also undermines congressional goals of incentivizing and protecting retirement savings for the benefit of retirees' dependents.

The court of appeals' rationale for adopting a narrow construction of "retirement funds" overlooked the fact that individuals need money in retirement not only to care for themselves, but also to care for those who depend upon them. Beneficiaries in need of support are not limited to spouses. The ERISA statute expresses congressional policy as fostering "the continued well-being and security of millions of employees and their dependents." 29 U.S.C. 1001. Indeed, this Court has recognized the policy underlying ERISA as "a decision to safeguard a stream of income for pensioners [] and their dependents." *Guidry* v. *Sheet Metal Workers Nat'l Pension Fund*, 493 U.S. 365, 376 (1990). By choosing to protect from creditors only IRAs designating the owner's spouse as a beneficiary, the court of appeals ignored other dependent relationships, such as unmarried couples and parents with dependent adult children, among others.

Take, for example, a retiree who is receiving minimum distributions from her IRA based on the retiree's expected lifespan, using these funds to care for a non-spouse dependent, in addition to herself. Upon the owner's death, the dependent, if a designated beneficiary, is entitled to distributions over her projected lifespan. These withdrawals are not a windfall "inheritance," but are instead the continuation of the original owner's support of the dependent as would have occurred absent the owner's premature death. The court of appeals' narrow view of the purpose of retirement

savings threatens to expose to creditors assets set aside to support beneficiaries in the event of the owner-caretaker's death. That reading frustrates, rather than furthers, Congress's policy goals.

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be reversed.

Respectfully submitted.

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